

Opinion No. 39-3008(a)

January 29, 1939

BY: FILO M. SEDILLO, Attorney General

TO: Mr. David S. Bonem, City Attorney, Tucumcari, New Mexico.

{*14} I am in accord with Mr. Myles P. Tallmadge of Denver, Colorado, and with Judge Kiker, in their opinions as to the authority of the City of Tucumcari to issue bonds under Chapter 57, Laws of 1933, as amended by Chapter 4 of the Laws of 1934, and Chapter 61 of the Laws of 1931, and that such action would not result in penalties provided for unlawful issuance of bonds.

It is my opinion that Chapter 57 of the Laws of 1933, as amended, was intended to be complete authority and is entirely independent of Chapter 88 of the Laws of 1937. I am of the firm belief {*15} that the language in Seward vs. Bowers clearly indicates that the Supreme Court understands the statutes to authorize revenue bonds without elections; though the particular question raised by Mr. Gilbert, to-wit, that Chapter 88 of the Session Laws of 1931 constitutes a limitation was not raised.

That Chapter 57, Laws of 1933, (as amended, authorized issuance of revenue bonds without election is not only my opinion, but that was the ruling of this office by Assistant Attorney General Quincy Adams on July 1, 1935. See request for and Opinion No. 1081.

I call attention to the fact that in addition to Section 2 of the Act authorizing the City to issue revenue bonds, Section 4 of the Act states the procedure to be followed. It declares that the City Council may "authorize the issuance thereof by ordinance, adopted by the affirmative vote of two-thirds of all the members of said governing bodies, etc." It says nothing about submission to the vote of the people.

I further call attention to the fact that this Section 4 was reenacted in the same language and with the same provisions by Chapter 4 of the Laws of 1934, with knowledge of the language and holding in the opinion of Seward vs. Bowers which was decided in 1933, and that Section 2, of Chapter 57, of the Laws of 1933, was also reenacted in substantially the same language in 1934 and again in 1937, with full knowledge of the language and holding in the Seward vs. Bowers opinion, and clearly to broaden the Act so as to cover the situation involved in that case.

The reenactment of Section 2 in 1937 was also subsequent to Mr. Adams' opinion above referred to.

Under those circumstances, it is my opinion that, regardless of the intent of the Legislature in 1933, it was clearly the intent of the Legislature of 1937 to authorize such bonds without an election.

By: A. M. FERNANDEZ,

Asst. Atty. Gen.