

Opinion No. 43-4338

July 16, 1943

BY: EDWARD P. CHASE, Attorney General

TO: Honorable Guy Shepard, State Treasurer, Santa Fe, New Mexico

You have submitted to this office a transcript of proceedings for the issuance of bonds by the City of Roswell in the sum of \$ 40,000 for the purpose of repaying advances by the State Finance Board and the New Mexico Military Institute to the City of Roswell, said advances being used to acquire a site for a municipal airport. These proceedings are complete, except that the ordinance creating the debt and providing for the issuance of the bonds and the terms thereof has not been published and therefore is not in effect.

You inquire as to the validity of the bonds in the event the proceedings are completed as required by law.

Section 14-2304 of the 1941 Compilation authorizes municipalities to issue and dispose of negotiable bonds subject to the limitations and in accordance with Article 9 of the Constitution, for the purpose of securing funds for the acquisition or construction of an airport, etc.

The proceedings in connection with the issuance of these bonds are in conformity with the legal requirements, with the exception that the proceedings looking to the issuance of the same, and the bonds, are to be issued for the purpose of repaying to the State Finance Board and the New Mexico Military Institute \$ 40,000 advanced by said Board and Institute. This purpose is not authorized at the time the proceedings were instituted.

Article 9, Section 12 of the New Mexico Constitution, sets forth the limitations upon municipal indebtedness. Apparently there is no constitutional prohibition against a municipality issuing bonds for the purpose for which these bonds are intended and for that reason the Legislature has the power to authorize the issuance of such bonds.

House Bill No. 120, which will be Chapter 28, Laws of 1943, is an act validating, approving and confirming proceedings taken by any municipal corporation in the State of New Mexico for the authorization, issuance and sale of negotiable municipal bonds to obtain funds to be used in the re-payment of any sums due by said municipal corporation for any moneys advanced to it and used in the acquisition of lands for the construction of a municipal airport, and authorizing such municipality to sell, issue and deliver such negotiable municipal bonds.

It is a general rule of law that bonds issued without authority of law may be validated by a subsequent statute, providing the Legislature could have authorized the issuance of such bonds in the first place. *Jonesboro v. Cairo and St. Louis Railway Co.*, 110 U.S. 192, 4 S. Ct. 67, 28 Law Ed. 116; *Redlands v. Brook*, 151 Cal. 474, 91 Pac. 150; *Weber*

v. Helena, 89 Mont. 109, 297 Pac. 455; Bollenbacker v. Harris, 196 Ind. 657, 148 N. E. 417.

If the bonds themselves may be validated I see no reason why the proceedings for the issuance of bonds may not likewise be validated by a subsequent statute. Since this is done by the above mentioned Act, I am of the opinion that the bonds, when issued, will be the legal, valid and binding obligation of the City of Roswell. In the form of bond, as set forth in the proposed ordinance, the various laws authorizing the issuance are set forth. In order to complete the reference to all the laws I believe the above mentioned Act should be included therein, in order to show that the proceedings have been validated by the Legislature. The ordinance should be repassed as amended and then published.

By C. C. McCULLOH

First Asst. Atty. Gen.