

Opinion No. 44-4588

September 25, 1944

BY: C. C. McCULLOH, Attorney General

TO: Mr. J. D. Hannah, Secretary, State Board of Finance, Santa Fe, New Mexico

You have requested in your letter dated September 22, 1944 an opinion of this office concerning the legality of the State Board of Finance's making an advance of \$ 30,000 to the city of Tucumcari to finance a housing project for workers on the Conchas Dam project.

Section 12 of Article 9 of the Constitution of the State of New Mexico prohibits any municipality from incurring an indebtedness "unless the question of incurring the same shall, at a regular election for councilmen, aldermen or other officers of such city, town or village, have been submitted to a vote of such qualified electors thereof as have paid a property tax therein during the preceding year, and a majority of those voting on the question, by ballot deposited in a proper ballot box, shall have voted in favor of creating such debt."

It is thereby noted that if the Board of Finance should make the requested advance of funds, that the city of Tucumcari would not be legally obligated to repay the money for the reason that the debt has been created in violation of the Constitution and, therefore, in legal effect no debt would be created until such time as the city of Tucumcari should validate the proceeding by complying with the above cited provision of the Constitution of the State of New Mexico and the various statutes relating to municipal indebtedness.

We are unable to find any statute authorizing the Board of Finance to advance money to a municipality other than Chapter 7 of the Laws of 1941 and unless it should be determined that Chapter 7 is authorization for the particular advance involved, it is our opinion that the Constitution forbids the incurring of the indebtedness under the fact situation presented to us, and the statutes of this State do not allow the Board of Finance to advance money to a municipality for such a purpose. In view of the foregoing, we quote from Section 1, Chapter 7 of the Laws of 1941:

"An emergency is hereby declared to exist, and there is hereby appropriated the sum of \$ 750,000.00, or so much thereof as may be required to be expended and disbursed by and under the direction of the State Board of Finance, **in such manner and for such purposes**, and through such agencies, and under **such regulations** as said State Board of Finance **may deem necessary or proper to provide for cooperation with the Federal Government in all matters relating to National Defense involving the State of New Mexico and its internal defense**, including civilian training in connection with aviation in all its branches, the necessary expenses of the State Guard, the expenses of the Adjutant General's Office, both regular and emergency, **and any and**

all matters now or hereafter necessary for the adequate protection of persons and property within the State of New Mexico."

It is noted that wide discretion is granted the Board of Finance in determining how the sum appropriated might be used, and while it has not been made to appear to us that the project involved would come within the meaning and intention of the above mentioned section, it is, however, noted that the government has granted a priority to do the work involved for the purpose of increasing the production of food in order to aid the war effort as a whole.

In the past, the Board of Finance has advanced money to municipalities for improving airports and for other similar purposes clearly within the intent of the above section. A much closer question is here presented concerning whether it is necessary for the adequate protection of persons and property within the State of New Mexico to finance the housing project for workers on the Conchas Dam project. This is a question which we feel must be ultimately decided by the Board of Finance and not by this office, under the statute, and therefore, the opinion expressed in the preceding paragraph is not intended to be binding on the Board of Finance.

By HARRY L. BIGBEE,

Asst. Atty. General