

## Opinion No. 45-4724

May 23, 1945

**BY:** C. C. McCULLOH, Attorney General

**TO:** Mr. C. R. Sebastian State Comptroller Santa Fe, New Mexico

{\*75} Replying to your letter of May 21, 1945, requesting an opinion on several questions propounded by the Mayor of the Village of Tularosa in his letter addressed to you dated May 15, 1945.

1. Is there any provision in FWA Form No. W-100 (Bureau of Community Facilities -- Grant Agreement) which "in any way conflicts with the state law?"

The answer is in the negative. In rendering this opinion, we deem it our obligation to caution the "governing body" of the village of Tularosa that they, or their agent, study the thirty-six provisions of the "agreement" in order to prevent a forfeiture of the grant made therein.

2. "That if the village signs it they are not obligating themselves unduly."

The answer to this question is in the negative. This opinion is based on the assumption that all necessary preliminary steps will be taken, sufficient and proper financing, budget compliance, authorization by state officers when required, obtaining land and rights-of-way and preliminary acts required by the "Grant Agreement."

3. "Further, that if the village has a right to sign the contract."

This question is answered by Section 14-3621 of the New Mexico 1941 Compilation:

"All incorporated cities and towns, and also such incorporated villages of 500 or more inhabitants which heretofore have complied or hereafter may comply, with the provisions of chapter seven (7) of the Session Laws of 1919 (Secs. 14-2009, 14-2010), shall have power by ordinance to contract for, establish, construct and maintain water-works and sewers, and all necessary or convenient pipe-lines, reservoirs and sewerage pipes, and other appurtenances therefor, to be used in connection therewith; which pipe-lines, reservoirs, sewer pipes and appurtenances shall be located within or without, or partly within and partly without, {\*76} the limits of such cities, towns or villages, as may be determined thereby."

(Sections 14-2009-10, quoted in the above section, refer to villages of 500 or more, qualifying by taking census -- your village being incorporated, is not affected by those sections.)

4. "If it is necessary to pass an ordinance or resolution." Yes.

"Section 14-2203. In the passage or adoption of every by-law or ordinance, and every resolution or order to enter into contract by any council or board of trustees of any municipal corporation, the yeas and nays shall be called and recorded, and to pass or adopt any by-law, ordinance, or any such resolution or order, a concurrence of a majority of the whole number of members elected to the council or board of trustees shall be required; all appointments of officers by any council shall be by ballot, and the concurrence of a like majority shall be required, and the names of those who voted, and the vote each candidate received upon the vote resulting in an appointment, shall be recorded."

Inasmuch as the writers letter requests permission from you to transfer funds, we assumed the question of annual budget or bond issue will not be involved and, therefore, did not deem it necessary to go into detail on those matters under question 2.

By THOS. C. McCARTY,

Asst. Atty. General