

## **Opinion No. 58-202**

October 6, 1958

**BY:** OPINION OF FRED M. STANDLEY, Attorney General Hilton A. Dickson, Jr.,  
Assistant Attorney General

**TO:** Mr. Ben Chavez, Secretary, State Board of Finance, Santa Fe, New Mexico

### **QUESTION**

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1. "In the event the Board of Finance is called upon to grant the Department of Health more than the \$ 40,000 it has already authorized for the control of Encephalitis, or, as a matter of fact, to any other agency for similar purposes, is there some disaster fund provision from which money could be made available (other than the normal Finance Emergency Fund)?"
2. "Is Article IX, Section 7 Constitution of New Mexico self-executing?"

#### **CONCLUSIONS**

1. Yes
2. See Opinion.

### **OPINION**

#### **ANALYSIS**

Before stating an analysis to the conclusions above stated, we believe it well to point out that the questions stated arise from the recent Encephalitis outbreak in the State and further the determination to expedite control measures against unusually heavy mosquito flights which are deemed responsible for the spread of the aforesaid disease. Initially the State Board of Finance and the Executive Officers of the State looked to the specific emergency appropriation as provided by the last Legislature for relief, but upon the exhaustion or anticipated exhaustion of this fund, it was necessary for a search and inquiry to be made for additional funds as may be made available to meet the emergency expenses. The posed problem is considered outside the realm of situations calling for the activation of the State Militia.

Specifically there is provided by Section 12-3-30, N.M.S.A., 1953 Compilation, authority for the State Board of Public Health to borrow the necessary funds by simply determining the need therefore and submitting a resolution to this effect to the Governor for his approval. Section 12-3-30 provides:

"Whenever epidemic disease, dangerous to the public health, is threatened or exists, and the state department is without funds, or without sufficient funds, to meet the expenses incident to prevent or abate the same the state board shall pass a resolution setting out in detail the emergency existing, the amount of funds on hand and the proposed steps to be taken to prevent the further spread of such epidemic and the abatement of same, together with the amount of funds necessary, in the judgment of the state board, to meet such emergency, and forthwith transmit the same to the governor, who, if he approves the same, shall return it to the state board with his approval endorsed thereon over his signature, and thereupon the state board may borrow such funds, in an amount, which in the opinion of the state board of finance is necessary, to meet such emergency, upon the credit of the state. Provided that interest to be paid upon any such funds so borrowed shall not exceed 6 per cent. If the governor disapproves the resolution he shall so notify the said state board."

As directed in the aforequoted statute the credit of the State as is provided by law may be looked to as the means by which otherwise unavailable funds may be acquired. In this regard we must look to the restrictive provisions, if any, as are to be found in the law regarding the State's borrowing power and in search thereof we are immediately confronted with Article IX, Section 7 of the Constitution as suggested in your inquiry. The pertinent language of this provision provides that "the State may borrow money not exceeding the sum of \$ 200,000 in the aggregate to meet casual deficits or failure in revenue, or for necessary expenses." It is our opinion that the immediately considered situation, the protection of public health, falls within the latter stated purpose. No other emergency, public welfare or disaster funds are found.

While reference has specifically been made in your inquiry to the appropriation to the State Board of Finance as designated for use in meeting emergency and the expenses affecting the public welfare, it is our belief that this appropriation need not be considered in light of the section hereinabove quoted, i.e., § 12-3-30, and its enabling effect upon Article IX, Section 7. Accordingly, it is concluded as our opinion in the immediate situation, that upon a determination by the State Board of Public Health that an epidemic is threatened or does exist, that such determination may be made the subject of a resolution including an estimate of the funds required and not otherwise available, and that said resolution upon submission to and approval by the Governor, is sufficient authority for the pledging of the State's credit limited only by the aggregate sum of that indebtedness specified in the constitutional provision. It is our further opinion that the limitation imposed by the aforesaid constitutional provision is directed only to the sum outstanding at any given time and accordingly it would be permissible for additional casual certificates to be issued and additional monies borrowed upon the cancellation of outstanding certificates realized by the receipt of revenues not otherwise committed.

In view of the conclusions reached in response to your first question, and the analysis stated with regard thereto, we believe that there is no need at the present time or by the instantly considered facts necessitating an answer or opinion relative to your second question.