

CONFIDENTIAL--ATTORNEY CLIENT PRIVILEGED MEMORANDUM

TO: Ike Pino, Public Works Division Director, City of Santa Fe  
Kathryn Raveling, Finance Division Director, City of Santa Fe

THROUGH: Geno Zamora, City Attorney, City of Santa Fe

FROM: Judith Amer, Assistant City Attorney, City of Santa Fe 

DATE: July 21, 2011

RE: City of Santa Fe ("City") General Obligation Bond ("GO") Series 2008

**Issue:** Can the City pay for the salaries of four City employees who work "to improve" designated City public parks, trails and open space projects using proceeds from the City's GO Bond Series 2008 ( \$20,000,000 issued "to acquire land for, and to improve, public parks, trails and open space for recreational purposes")?

**Conclusion:** Yes, as long as the 4 City employees' daily work is "to improve public parks, trails and open space for recreational purposes." This decision needs to be made on a case by case basis depending on the specific facts pertaining to the exact type of work being performed by these 4 City employees. Presently, the City Attorney's Office has not been presented with specific facts regarding the work being performed by these 4 City employees.

See, Discussion herein.

**Discussion:**

On March 4, 2008, at the general obligation bond election, the electors of the City authorized the City Council to issue, pursuant to Sections 6-15-1 etseq. NMSA 1978, general obligation bonds in the amount of \$20,000,000 for the following purpose: "to acquire land for, and to improve, public parks, trails and open space for recreational purposes" (hereinafter referred to as "the GO Bonds"). On April 30, 2008, the City Council passed Ordinance No. 2008-22 authorizing the issuance and sale of the GO Bonds.

The crux of the issue is whether or not the daily work these City employees are performing fits within the question voted on by the electorate "to improve public parks, trails and open space for recreational purposes" because pursuant to the New Mexico Constitution, Article IX Section 12,<sup>1</sup> and Article IX, Section 9,<sup>2</sup> the bond proceeds can

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<sup>1</sup> Article IX, Section 12 states: "No city, town or village shall contract any debt except by an ordinance, which shall be irrevocable until the indebtedness therein provided for shall have been fully paid or discharged, and which shall specify the purposes to which the funds to be raised shall be applied, and which shall provide for the levy of a tax, not exceeding twelve mills on the dollar upon all taxable property within such city, town or village, sufficient to pay the interest on, and to extinguish the principal of, such debt within fifty years. The proceeds of such tax shall be applied only to the payment of such interest and principal. No such debt shall be created unless the question of incurring the same shall, at

only legally be used for the purposes voted on by the electorate. See, quotations from Article IX, Section 9 and 12, footnotes 1 and 2 (**bold**) for the relevant language. Also, see, Attorney General Opinions 2010-04, 58-234, 5656 (1953) and 5957 (1953-1954) which all stand for the proposition that a municipality is required to use funds for the purposes specified in the ordinance passed by the governing body for issuing the bonds, the notice of election on the bond issuance and in the question posed on the ballot.

Recently, the New Mexico Attorney General decided that a school district could use bond proceeds for projects that were not specifically set forth in the district's voter brochure, as long as the project was within the scope of the ballot question. The district's voter brochure had included a description of projects at specific schools that would be funded by the bonds if approved. After the bonds, were approved, the district used the proceeds for some projects that were not described in the district's plan presented to the voters. AG OP. No. 2010-04 specifically stated:

"...New Mexico judicial and other legal authorities evaluating whether a governmental entity property spent bond proceeds under the constitutional debt limitation have not looked beyond the proposition submitted to and approved by voters. For example, in State ex rel. Board of County Comm'rs v. Montoya, 91 N.M. 421, 575 P.2d 605 (1978), the New Mexico Supreme Court addressed a county's general obligation bonds that were "authorized and approved" and "issued by the county for the specific purpose of constructing and equipping a county detention facility." The Court held that "[t]his is the purpose for which the voter approved bonds" and the county could use the bond proceeds only for that purpose. *Id.* at 422-423. 575 P.2d at 606-607. See also, N. M. Atty. Gen. Op. No. 58-234 (1958) (a municipality could not divert general obligation bond proceeds from the purpose approved by voters); N. M. Atty. Gen. Op. No. 5656 (1953) (county could not change use of bond proceeds from that specified in the notice of the bond elections); N. M. Atty. Gen. Op. 1807 (1916) (school district was required to use bond proceed for purpose specified in notice of election and approved by voters)...."

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**a regular election for councilmen, aldermen or other officers of such city, town or village, or at any special election called for such purpose, 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 separate ballot box when voting in a regular election, shall have voted in favor of creating such debt.** A proposal which does not receive the required number of votes for adoption at any special election called for that purpose, shall not be resubmitted in any special election within a period of one year. For the purpose, only, of voting on the creation of the debt, any person owning property within the corporate limits of the city, town or village who has paid a property tax therein during the preceding year and who is otherwise qualified to vote in the county where such city, town or village is situated shall be a qualified elector. (As amended November 3, 1964.) (emphasis added)

<sup>2</sup> Article 9, Section 9 states: "Any money borrowed by the state, or any county, district or **municipality** thereof, shall be applied to **the purpose for which it was obtained**, or to repay such loan, and to **no other purpose whatever.**" (emphasis added).

Based upon the above quoted Attorney General Opinions interpreting the New Mexico Constitution, as long as the City employees are directly working on improving parks, trail and open space for recreational purposes, then the cost of the salaries of those employees made be paid for from bond proceeds.