MISC Book 121 Page 4481

Filed For Record 8/23/89 at 2:46PM Stella M. Lopez, Recorder

STATE OF NEW MEXICO)
COUNTY OF COLFAX : ss.
CITY OF RATON)

The County Commission of the County of Colfax, New Mexico, met in regular session in full conformity with law and the rules and regulations of the Commission at the Commission Chambers in the Colfax County Courthouse in the City of Raton, New Mexico, being the regular meeting place of the Commission, on the 26th day of June, 1989, at the hour of 10:00 a.m. Upon roll call, the following members were found to be present:

Mary Ann M. Hunter - Chairman Colfax County Commission

Edgar K. Bernard - Vice - Chairman Colfax County Commission

Joe M. Gallegos - Member Colfax County Commission

Absent:

Also present: Whitney Hite - Manager, Harold Breen - Attorney

Stella M. Lopez - Clerk,

Thereupon, there was officially filed with the County Clerk, the Chairman of the Commission and each Commissioner a copy of a proposed bond ordinance in final form. Commissioner GALLEGOS thereupon introduced the following ordinance:

ORDINANCE NO. 89-1

AUTHORIZING THE EXECUTION AND DELIVERY OF AN AMENDED AND RESTATED LEASE WITH PREPAYMENT OPTION AGREEMENT OF COLFAX COUNTY, NEW MEXICO, EVIDENCING A SPECIAL LIMITED OBLIGATION OF THE COUNTY TO PAY A PRINCIPAL AMOUNT OF $1,391,196 FOR THE PURPOSE OF DEFRAYING THE COST OF CONSTRUCTING, ACQUIRING AND EQUIPPING A JAIL FACILITY PROJECT FOR USE BY THE COUNTY; PROVIDING FOR THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THE AGREEMENT SOLELY FROM PLEDGED GROSS RECEIPTS TAX REVENUES OF THE COUNTY AND REVENUES OF THE PROJECT; APPROVING THE FORM AND TERMS OF THE AGREEMENT AND OTHER DETAILS CONCERNING THE AGREEMENT; RATIFYING ACTIONS HERETOFORE TAKEN; REPEALING ALL ACTION INCONSISTENT WITH THIS ORDINANCE; AUTHORIZING THE TAKING OF OTHER ACTIONS IN CONNECTION WITH THE EXECUTION AND DELIVERY OF THE AGREEMENT; AND DECLARING AN EMERGENCY.

WHEREAS, the County of Colfax (the "County") is authorized under the laws of the State of New Mexico, and particularly Sections 4-62-1 et seq., and Sections 3-31-1 et seq., NMSA 1978(the "Acts"), to execute and deliver obligations in order to finance the cost of construction, purchase, furnishing, equipping and making improvements to public buildings, including specifically, jails, and acquiring, enlarging, bettering, repairing, improving, purchasing, furnishing and equipping a revenue producing project, all as set forth in the Acts, and, as necessary, to enter into agreements with respect to revenue producing projects; and

WHEREAS, the County desires to acquire a jail facility for use by the County (the "Project"); and

WHEREAS, the County has, pursuant to its Ordinance No. 86-2 duly adopted on December 3, 1986, imposed a gross receipts tax pursuant to the County Gross Receipts Tax Act at a rate equal to 1/8th of 1% and has dedicated the revenue from the tax (the "Pledged Gross Receipts Tax Revenues") for capital improvements; and

WHEREAS, the Pledged Gross Receipts Tax Revenues may lawfully be pledged to the payment of obligations of the County pursuant to Sections 4-62-1 et seq. and Sections 3-31-1 et seq., NMSA 1978, and the Pledged Gross Receipts Tax Revenues have not been pledged to any other obligation of the County heretofore issued, executed and delivered and now outstanding; and

WHEREAS, the revenues from the Project, if any, and as provided in the Agreement (as hereinafter defined) may lawfully be pledged to secure the payment of the obligations of the County under the Agreement; and

WHEREAS, moneys available for the Project from all sources other than proceeds to be derived from the execution and delivery of the Agreement are not sufficient to defray the cost of the Project; and

WHEREAS, the Agreement, together with the interest thereon, shall be a special limited obligation of the County, payable solely as provided in the Agreement and shall not constitute a general obligation of the County, or a debt or pledge of the faith and credit of County or the State of New Mexico; and

WHEREAS, there has been placed on file with the County Clerk prior to this meeting (1) the proposed form of Amended and Restated Ground Lease (the "Ground Lease"), between the County and New Mexico Capital Markets; and (2) the proposed form of Amended and Restated Lease with Prepayment Option Agreement (the "Agreement") between the County and New Mexico Capital Markets.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNTY COMMISSION OF THE COUNTY OF COLFAX, AS FOLLOWS:

Section 1. <u>Ratification</u>. All action heretofore taken (not inconsistent with the provisions of this Ordinance) by the County Commissioners and the officers, employees and agents of the County, directed toward the acquisition of the Project and the execution and delivery of the Agreement and Ground Lease be, and the same hereby is, ratified, approved and confirmed.

Section 2. Findings. The County Commission hereby declares that it has considered all relevant information and data and hereby makes the following findings:

A. The Project is needed to meet the needs of the County and its inhabitants.

B. Moneys available for the County from all sources other than the proceeds to be derived from the execution and delivery of the Agreement are not sufficient to defray the costs of the Project.

C. The Pledged Gross Receipts Tax Revenues and revenues derived from the Project may lawfully be pledged to secure the payment of the obligation of the County evidenced by the Agreement.

D. It is economically feasible to defray, in part, the cost of the Project with the proceeds to be derived from the execution and delivery of the Agreement.

E. The execution and delivery of the Agreement pursuant to the Act, to provide funds for the financing of the Project is necessary and in the interest of the public health, safety, morals and welfare of the residents of the County.

F. The net effective interest rate on the Agreement will be established in a resolution to be subsequently adopted by the County Commission prior to execution and delivery of the Agreement (the "Sale Resolution") but will be less than 12% as required by law.

Section 3. Agreement - Authorization and Detail.

A. This Ordinance has been adopted by the affirmative vote of at least three-fourths of all of the members of the County Commission. For the purpose of protecting the public health, conserving the property, protecting the general welfare and prosperity of the citizens of the County and acquiring the Project, it is hereby declared necessary that the County, pursuant to the Act, execute and deliver the Agreement evidencing a special limited obligation of the County to pay a principal amount of $1,391,196 and the execution, sale and delivery of the Agreement is hereby authorized. The Project will be owned by the County and the County will use the Project for its governmental purposes.

B. The Agreement shall be delivered through negotiation to New Mexico Capital Markets.

C. The Agreement shall be in substantially the form of the Agreement presented at the meeting of the County Commission at which this Ordinance was adopted. The rate of interest to be paid by the County pursuant to the Agreement, to be a net effective interest rate not exceeding 12%, and the prepayment option prices under the Agreement, will be finally determined in the Sale Resolution.

Section 4. Approval of Agreement. The form of the Agreement as presented at the meeting of the County Commission at which this Ordinance was adopted is hereby approved. The

Chairman of the County Commission is hereby authorized to execute, acknowledge and deliver the Agreement with such changes, insertions and omissions as may be approved by the Chairman of the County Commission, and the County Clerk is hereby authorized to affix the seal of the County on the Agreement and attest the same. The execution of the Agreement by the Chairman of the County Commission shall be conclusive evidence of such approval.

Section 5. Special Limited Obligation. The Agreement shall be secured by the pledge of the Pledged Gross Receipts Tax Revenues as set forth in the Agreement and shall be payable solely from the Pledged Gross Receipts Tax Revenues; provided, to the extent the Pledged Gross Receipts Tax Revenues are insufficient and upon the conditions set forth in the Agreement, shall also be payable from and secured by a pledge of the payments, revenues and receipts derived from or in connection with the Project, if any, and as provided in the Agreement as allowed by the Acts. The Agreement, together with interest thereon and other obligations of the County thereunder, shall be special limited obligations of the County, payable solely as provided in this Ordinance and the Agreement and shall not constitute a general obligation of the County, or a debt or pledge of the faith and credit of the County or the State of New Mexico and the holder of the Agreement may not look to any general or other fund of the County for payment of the obligations. Nothing contained in this Ordinance nor in the Agreement, nor any other instrument, shall be construed as obligating the County (except with respect to the application of the Pledged Gross Receipts Tax Revenues and revenues received with respect to the Project, if any, and as provided in the Agreement), nor as incurring a pecuniary liability or a charge upon the general credit of the County or against its taxing power, nor shall a breach of any agreement contained in this Ordinance, the Agreement, or any other instrument impose any pecuniary liability upon the County or any charge upon its general credit or against its taxing power. The Agreement shall never constitute an indebtedness of the County within the meaning of any State constitutional provision or statutory limitation and shall never constitute or give rise to a pecuniary liability of the County or a charge against its general credit or taxing power. Nothing herein shall prevent the County from applying other funds of the County legally available therefor to payments required by the Agreement, in its sole and absolute discretion.

Section 6. Approval of Ground Lease. The lease of the land as contemplated by the Ground Lease and the execution and delivery of the Ground Lease in the form presented at the meeting of the County Commission at which this Ordinance was adopted is hereby authorized. The Chairman of the County Commission is hereby authorized to execute, acknowledge and deliver the Ground Lease with such changes, insertions and omissions as may be approved by the Chairman of the County Commission and the County Clerk is hereby authorized to affix the seal of the County on the Ground Lease and attest the same. The execution of the Ground Lease by the Chairman of the County Commission shall be conclusive evidence of approval.

Section 7. Funds and Accounts. The County hereby creates the following special and separate funds, which shall be under the control of the County:

A. Gross Receipts Tax Revenue Fund. Creates the "Colfax County One-Eighth Gross Receipts Tax Revenue Fund" for the deposit of Pledged Gross Receipts Tax Revenues.

B. Project Revenue Fund. Creates the "Colfax County Project Revenue Fund" for the deposit of the revenues derived from the Project, if any, and as provided in the Agreement.

C. Jail Improvements Fund. Creates the "Colfax County Jail Improvements Fund" to be maintained by the County and from which payments required under the Agreement shall be made.

Section 8. Deposit of Revenues and Flow of Funds.

A. So long as any of the obligations of the County under the Agreement are unpaid, all of the Pledged Gross Receipts Tax Revenues received by the County shall promptly be set aside and deposited in the Gross Receipts Tax Revenue Fund and all of the revenue derived from the Project, if any, and as provided in the Agreement shall promptly be set aside and deposited in the Project Revenue Fund.

B. Jail Improvements Fund. From moneys in the Gross Receipts Tax Revenue Fund and from the Project Revenue Fund there shall be transferred to the Jail Improvements Fund monthly, commencing on the first Payment Date (defined in the Agreement), an amount necessary, together with any other moneys therein available therefor, to pay the Total Payment (defined in the Agreement) due under the Agreement on each due date, and monthly thereafter, an amount necessary to pay the next Total Payment due.

C. Credit. In making the deposits required to be made into the Jail Improvements Fund, if there are any amounts then on deposit in the Jail Improvements Fund available for the purpose for which such deposit is to be made, the amount of the deposit to be made pursuant to paragraph B above shall be reduced by the amount available in such fund and available for such purpose.

D. Transfer of Money out of Jail Improvements Fund. Each Total Payment due under the Agreement shall be transferred from the Jail Improvements Fund to the holder of the Agreement or its assigns in sufficient time to make such Total Payment on the due date of such payment and as otherwise provided in the Agreement.

E. After making all the monthly payments hereinabove required to be made by this Section, the remaining Pledged Gross Receipts Tax Revenues and Project Revenues, if any, may be applied to any other lawful purpose including other payments and obligations required under the Agreement.

Section 9. <u>General Administration of Funds</u>. The funds designated in Section 7 shall be administered and invested as follows:

A. The funds shall be separately maintained as a trust fund or funds for the purposes established and shall be deposited in one or more bank accounts in an insured bank or banks. Each account shall be continuously secured to the extent required by law and shall be irrevocable and not withdrawable by anyone for any purpose other than the designated purpose. Payments shall be made into the proper account on the first day of the month except when the first day shall not be a business day, then payment shall be made on the next succeeding business day.

B. Moneys in any fund or account not immediately needed may be invested in any investment permitted by law. The obligations so purchased as an investment of moneys in any fund or account shall be deemed to be part of such fund or account, and the interest accruing thereon and any profit realized therefrom shall be credited to such fund or account, and any loss resulting from such investment shall be charged to such fund or account. The County Treasurer shall present for redemption or sale on the prevailing market any obligations so purchased as an investment of moneys in the fund or account whenever it shall be necessary to do so in order to provide moneys to meet any payment or transfer from such fund.

Section 10. Lien on Pledged Tax Revenues. The Pledged Gross Receipts Tax Revenues, the Project Revenues, if any, and as provided in the Agreement, and the amounts and securities on deposit in the Jail Improvements Fund, and the proceeds thereof, are hereby authorized to be pledged to, and are hereby pledged, and the County grants a security interest therein, to the payment of obligations evidenced by the Agreement, subject to the uses thereof permitted by, and the priorities set forth in, the Ordinance. The Agreement constitutes an irrevocable and first lien, but not necessarily an exclusive first lien, on the Pledged Gross Receipts Tax Revenues and the Project Revenues.

Section 11.

A. All covenants, stipulations, obligations and agreements of the County contained in this Ordinance, the Agreement and the Ground Lease, shall be deemed to be the covenants, stipulations, obligations and agreements of the County to the full extent authorized or permitted by law, and such covenants, stipulations, obligations and agreements shall be binding upon the County and its successors and upon any board or body to which any powers or duties affecting such covenants, stipulations, obligations and agreements shall be transferred by or in accordance with law. Except as otherwise provided in this Ordinance, all rights, powers and privileges conferred and duties and liabilities imposed upon the County by the provisions of this Ordinance, the Ground Lease or the Agreement shall be exercised or performed by the County or by such members, officers, board of the County as may be required by law to exercise such powers and to perform such duties.

B. No covenant, stipulation, obligation or agreement herein contained or contained in this Ordinance, the Ground Lease or the Agreement shall be deemed to be a covenant, stipulation, obligation or agreement of any officer, agent or employee of the County or member of the County Commission in his individual capacity, and neither the members of the County Commission nor any officer executing the Agreement shall be liable personally on the Agreement or be subject to any personal liability or accountability by reason of the execution and delivery thereof.

Section 12. Authorized Officers. The Chairman of the County Commission, each member of the County Commission and other County Officials are hereby authorized and directed to execute and deliver any and all papers, instruments, opinions, certificates, affidavits and other documents and to do and cause to be done any and all acts and things necessary or proper for carrying out this Ordinance, the Ground Lease and the Agreement.

Section 13. Delegated Powers. The officers of the County, attorneys and their agents or employees of the County and members of the County Commission are hereby authorized to do all acts and things required of them by this Ordinance, the Ground Lease or the Agreement, for the full, punctual and complete performance of all the terms, covenants and agreements contained in this Ordinance, the Ground Lease, and the Agreement, including but not limited to, the execution and delivery of closing documents, and reports to the Internal Revenue Service in connection with the execution and delivery of the Agreement.

Section 14. Ordinance Irrepealable. After the Agreement and Ground Lease have been executed and delivered, this Ordinance shall be and remain irrepealable until the principal amount of the Agreement and the interest thereon shall have been fully paid, canceled and discharged.

Section 15. Severability. If any section, paragraph, clause or provision of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance.

Section 16. <u>Repealer</u>. All bylaws, orders, resolutions and ordinances, or parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed as reviving any bylaw, order, resolution or ordinance or part thereof.

Section 17. <u>Amendment of Ordinance</u>. This Ordinance may be amended or modified only with the written consent of the holder of the Agreement as provided in the Agreement.

Section 18. <u>Emergency</u>. Because the County does not now have adequate jail facilities within the County, the Agreement must be expeditiously executed and delivered, and it is necessary to defray forthwith the costs of the Project, an emergency is hereby declared by the Commission to be an immediate danger to the public health, safety and welfare of the County; therefore, no publication prior to adoption of this Ordinance is necessary and, immediately upon final passage, this Ordinance shall be recorded in the book of ordinances in the County kept for that purpose, authenticated by the signatures of the Chairman of the County Commission, the members of the County Commission, and County Clerk, published one time by title and a general summary in the <u>Raton Range</u> or other newspaper which maintains an office in the County and which is of general circulation in the County, and this Ordinance shall be in full force and effect thereafter in accordance with law.

Section 19. Summary for Publication. Pursuant to the general laws of the State, the title and a general summary of the subject matter contained in the Ordinance shall be published in substantially the following form:

(Form of Summary of Ordinance for Publication)

Colfax County, New Mexico

Notice of Adoption of Ordinance

Notice is hereby given of the title and a general summary of the subject matter contained an ordinance duly adopted and approved by the County Commission of the County of Colfax, New Mexico, on June 26, 1989. Complete copies of the Ordinance are available for public inspection during normal and regular business hours of the County Clerk at the Colfax County Courthouse, Raton, New Mexico.

The title of the Ordinance is:

AUTHORIZING THE EXECUTION AND DELIVERY OF AN AMENDED AND RESTATED LEASE WITH PREPAYMENT OPTION AGREEMENT OF COLFAX COUNTY, NEW MEXICO, EVIDENCING A SPECIAL LIMITED OBLIGATION OF THE COUNTY TO PAY A PRINCIPAL AMOUNT OF $1,391,196 FOR THE PURPOSE OF DEFRAYING THE COST OF CONSTRUCTING, ACQUIRING AND EQUIPPING A JAIL FACILITY PROJECT FOR USE BY THE COUNTY; PROVIDING FOR THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THE AGREEMENT SOLELY FROM PLEDGED GROSS RECEIPTS TAX REVENUES OF THE COUNTY AND REVENUES OF THE

PROJECT; APPROVING THE FORM AND TERMS OF THE AGREEMENT AND OTHER DETAILS CONCERNING THE AGREEMENT; RATIFYING ACTIONS HERETOFORE TAKEN; REPEALING ALL ACTION INCONSISTENT WITH THIS ORDINANCE; AUTHORIZING THE TAKING OF OTHER ACTIONS IN CONNECTION WITH THE EXECUTION AND DELIVERY OF THE AGREEMENT; AND DECLARING AN EMERGENCY.

The following is a general summary of the subject matter contained in the Ordinance:

Preambles of the Ordinance recite the authority of the County to incur obligations to finance the cost of acquiring a jail facility, to pledge gross receipts tax revenues and revenues to be derived from the jail facility to repayment of the obligations, recite that the obligation of the County shall be a special limited obligations and not a general obligation of the County and that certain documents have been placed on file with the County Clerk and presented to the County Commission.

Sections 1 through 3 ratify prior action taken by the County Commission and County officers; set forth certain findings of the County Commission regarding the obligations to be incurred by the County and with respect to the Project; set forth details of the obligations and provide that the County shall be obligated to pay $1,391,196 for the jail project and that the net effective interest rate on the obligations will be determined prior to delivery of the obligations but will be less than 12%.

Sections 4 through 7 approve the form of the obligation to be delivered by the County; state that the obligation is a special limited obligation of the County and shall never constitute an indebtedness of the County within the meaning of any state Constitutional provision or statutory limitation; approve the form of a Ground Lease upon which the jail facility will be erected; and create special and separate funds for payment of revenues to be used to pay the obligations.

Sections 8 through 10 relate to deposits of the revenues pledged to pay the obligations and flow of funds; provide details related to general administration of the funds and investment of moneys held in the funds; and provide for a lien on the tax revenues and project revenues for the benefit of the holders of the obligations.

Sections 11 through 13 provide that covenants contained in the Ordinance and related documents shall be binding and enforceable upon the County but shall not be a covenant or obligation of any officer of the County in his individual capacity and authorize execution of other documents related to the obligation of the County in the taking of other acts related to the Ordinance.

Sections 14 through 19 provide that the Ordinance is irrepealable until the obligation is fully paid; provide a severability clause, a repealer clause, declare an emergency, for amendment of the Ordinance, and provide a summary for publication.

This notice constitutes compliance with § 6-14-6 NMSA 1978.

WITNESS MY HAND AND SEAL of Colfax County, New Mexico, this 26th day of June, 1989.

Stella M. Lopez
County Clerk

(End of Form of Summary for Publication)

PASSED AND ADOPTED THIS 26TH DAY OF JUNE, 1989. BY A VOTE OF 3 FOR AND 0 AGAINST.

[SEAL]

Mary Ann M. Hunter
Chairman
Colfax County Commission

Edgar K Bernard
Member

Ivm. Gallegos
Member

ATTEST:

Stella M. Lopez
County Clerk

Approved as to form and legality:

Arnold Breen
County Attorney

A motion to temporarily suspend any and all rules and regulations of the Commission which might prohibit the immediate adoption and passage of said ordinance was made by Commissioner Gallegos, duly seconded by Commissioner Bernard, and upon being put to a vote, was passed and adopted on the following recorded vote:

Those Voting Aye: Mary M.Hunter - Chairman

Edgar K. Bernard - Vice-Chairman

Joe M. Gallegos - Member

Those Voting Nay:

Those Absent:

Three (3) Commissioners having voted in favor of said motion, the motion to suspend the rules was thereupon declared by the President to have passed.

Commissioner GALLEGOS then moved adoption of the foregoing ordinance, duly seconded by Commissioner BERNARD.

The motion to adopt said ordinance, as amended, upon being put to a vote, was passed and adopted on the following recorded vote:

Those Voting Aye: Mary Ann Hunter - Chairman

Edgar K. Bernard - Vice- Chairman

Joe M. Gallegos - Member

Those Voting Nay:

Those Absent:

Three (3) Commissioners having voted in favor of said motion, the Chairman declared said motion carried and said ordinance adopted, whereupon the Chairman and County Clerk signed the ordinance upon the records of the minutes of the Commission.

After consideration of the matters not relating to the ordinance, the meeting on motion duly made, seconded and unanimously carried, was adjourned.

Mary Ann Hunter

Mary Ann Hunter, Chairman

[SEAL]

ATTEST:

Stella M. Lopez

Stella Lopez, County Clerk

SEAL

STATE OF NEW MEXICO)
COUNTY OF COLFAX : ss.
CITY OF RATON)

I, Stella Lopez, the duly elected, qualified, and acting County Clerk of the County of Colfax, New Mexico (the "County"), do hereby certify:

1. The foregoing pages are a true, perfect, and complete copy of the record of the proceedings of the County Commission of the County of Colfax, New Mexico, constituting the governing board of the County, had and taken at a duly called regular, open meeting held in the Commission Chambers in the Colfax County Courthouse in the City of Raton, New Mexico, being the regular meeting place of the Commission, on the 26th day of June, 1989, at the hour of 10:00 a.m. insofar as the same relate to the proposed bond issue, a copy of which is set forth in the official records of the proceedings of the County kept in my office. None of the action taken has been rescinded, repealed, or modified.

2. Said proceedings were duly had and taken as therein shown, the meeting therein was duly held, and the persons therein named were present at said meeting, as therein shown.

3. Notice of said meeting was given by publication of a notice of such meeting in the Raton Range, a newspaper of general circulation in the County of Colfax, New Mexico and by posting notice of such meeting at the office of the County Clerk at least three days in advance of such meeting. Such notice constitutes compliance with one of the permitted methods of giving notice of meetings of the County Commission as required by the open meetings standards presently in effect, i.e., County Resolution No. 89-1.

IN WITNESS WHEREOF, I have hereunto set my hand this 26th day of June, 1989.

Stella M. Lopez

Stella Lopez, County Clerk

[SEAL]

[4891f]