

## Opinion No. 47-5021

May 8, 1947

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

**TO:** Harrold B. Sellers Chief Tax Commissioner State Tax Commission Santa Fe, New Mexico. Attention: E. P. Ripley, Tax Attorney

{\*44} In your request for an opinion from this office, you state that a **new consolidated district** proposes to issue bonds for erecting and furnishing school buildings and purchasing school grounds.

The facts are that one of the **old school districts**, which has been consolidated into the **new consolidated district**, already carries an indebtedness of 3% of its assessed valuation. The **new consolidated district** has no indebtedness.

The question presented for our determination is:

What amount of bonded indebtedness may the **new consolidated district** incur, and still be within the 6% limitation set out in Section 11, Article 9 of the New Mexico Constitution?

Section 11, Article 9 of the New Mexico Constitution limits the indebtedness of a school district to **6% of the assessed valuation of the taxable property within such school district, as shown by the preceding general assessment.**

Section 55-1904 of the 1941 Compilation provides that whenever a school district is consolidated and shall have outstanding debts or unpaid bonds, **it shall retain its identity for purpose of debt service until such time as the bonds or certificates are paid in full.**

The statutory and constitutional provisions of the states of Oklahoma and Washington are comparable to ours, and in those states it {\*45} has been uniformly held that if the proposed bond issue of a consolidated district (in terms of percentage of assessed valuation) added to the bonded indebtedness existing against one of the old districts (in terms of percentage of assessed valuation) which forms a part of the consolidated district exceeded the constitutional limit, then the proposed bond issue was invalid. (See Art. 10, Sec. 26, Okla. Constitution; Title 70, Sec. 255, Rev. Stat. Okla., 1941; Cheek v. Eye (Okla.) 219 P. 883; Mistler v. Eye (Okla.) 231 P. 1045; Ikard v. Union Graded School Districts (Okla.) 223 P. 141; Art. 8, Sec. 6, Constitution of Washington; Sec. 4740 Rem. Rev. Stat. Washington; State ex rel. Zylstra v. Clausen (Wash.) 119 P. 797.)

The reason for this rule as given by the courts is that districts, by successive changes in their boundaries, could so pyramid their indebtedness that property would be virtually confiscated. In New Mexico, for instance, districts could be consolidated, each having a

six per cent bonded debt; six per cent additional could be added after consolidation and spent. The districts could then be dissolved, new consolidated districts formed with other districts, and the process repeated. The constitutional provision under this theory becomes a nullity.

Under the facts as stated, the **new consolidated district** could not become indebted in an amount **exceeding 3% of the assessed valuation of taxable property of the new consolidated district** until the indebtedness in the old district is reduced.

By WM. R. FEDERICI,

Asst. Atty. General