

Opinion No. 54-5968

June 8, 1954

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. Tom Wiley Superintendent of Public Instruction Santa Fe, New Mexico

{*426} In your letter dated June 2, 1954, you state that in certain municipalities streets adjacent to school property have been paved and the assessments are being paid for by schools from direct charge funds. In certain instances, due to lack of funds in the direct charge fund, payments have to be made in installments over a period of years, requiring the schools to pay interest. You inquire whether under such circumstances a school becomes obligated to pay interest to the municipality in instances where it is not able to make a complete payment of the assessment out of one year's budget.

Section 14-3705 of the 1941 Compilation authorizes municipalities to levy a one mill tax for the purpose of paying the cost of paving streets abutting on land owned by such municipalities, the United States of America, the State of New Mexico or any county thereof. The Supreme Court in **Oliver v. Board of Trustees of Alamogordo**, 35 N.M. 477, 1 P. 2d 116, held that this Section does not authorize levying a one mill tax to pay for the assessments for paving abutting school property. Such payments apparently can be made only by contract between the school board and the municipality for that purpose and if installment payments are necessary, there is no prohibition against {*427} contracting to pay interest on such installments, or in the absence of an agreement pertaining to interest, there is no prohibition against paying the legal rate on such installments.

School districts pay interest on bond issues whether or not the bonds are owned by the State or some subdivision thereof, and under § 14-3704 boards of regents of educational and other public institutions are specifically authorized to pay installments on principal and interest due or to become due on any improvement project for which a municipal corporation has levied an assessment, such as a paving project abutting the property of such institution.

It is, therefore, our opinion that a school would become obligated to pay interest to the municipality upon the installments due as a result of an agreement to pay for the paving of streets abutting school property.

By: C. C. McCulloh

Assist. Attorney General