

Opinion No. 55-6081

January 20, 1955

BY: RICHARD H. ROBINSON, Attorney General

TO: Mrs. Georgia L. Lusk State School Superintendent, Santa Fe, New Mexico

In your letter dated January 18, 1955, upon the suggestion of the Board of Education of Hobbs, you request our opinion concerning the legality of using the proceeds of school bonds to complete sidewalks, fencing, surface area and landscaping which would ordinarily be included in building contracts. Apparently the Hobbs Board of Education let contracts for the erection of school buildings only and due to the necessity for additional space failed to include in the original contracts provisions for improving the school grounds.

Article 9, Section 11, of the Constitution uses this language, in part: "No school district shall borrow money, except for the purpose of erecting and furnishing school buildings or purchasing school grounds,"

Article 9, Section 10, of the Constitution has a similar provision with respect to counties borrowing money for the purpose of erecting necessary public buildings. In connection with counties, the Supreme Court has held that the proceeds of bond issues of counties may not be used for the purpose of remodeling and repairing buildings already erected. If remodeling or alterations were deemed advisable during the course of construction of a new building, such work could be done and proceeds used for that purpose. However, if a building has been erected and contract therefor completed, bond proceeds could not later be used to remodel, repair or alter such buildings.

With regard to the erection of county buildings, see *Tom v. Board of County Commissioners*, 43 N.M. 292 and *Board of County Commissioners v. State*, 43 N.M. 409.

In connection with the improvement of school grounds, we are of the opinion that the same would be in the same category as remodeling and alteration of school buildings and, under the general principle laid down by the Supreme Court, bond proceeds for erecting school buildings may not be used for improving school grounds subsequent to the completion of the school building under the contract.

By

C. C. McCulloh

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