

Opinion No. 63-59

June 10, 1963

BY: OPINION of EARL E. HARTLEY, Attorney General

TO: Tom Wiley, State Superintendent of Public Instruction Department of Education
Santa Fe, New Mexico

QUESTION

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1. Chapter 274, Laws 1963, creates a Public School Plant Facilities Commission which is authorized to consider applications from independent, municipal and county boards of education for state financial assistance for school plant construction. Under Section 5 of this law in order to be eligible for such assistance the public school finance division of the department of finance and administration must certify that the "administrative unit" has made a maximum effort to effect the construction itself but has reached its top bonding capacity. In order for a county school administrative unit to be eligible for such assistance, is it necessary that each district within the county school system be bonded to the maximum capacity permitted by law?

2. How is it to be determined whether the school district assessment ratio is equal to the average assessment ratio of the several counties of the state?

3. In the case of a county school administrative unit, is it necessary to make the determination that each district within the county system has an assessment ratio equal to the average assessment ratio of the several counties of the state?

CONCLUSIONS

1. No.
2. See analysis.
3. See analysis.

OPINION

{*126} ANALYSIS

The answer to your first question requires a brief investigation of the nature and operation of a county school system. Section 73-9-7, N.M.S.A., 1953 Compilation (P.S.) provides that the county board of education shall have supervision and control of all rural schools and districts and of sites, buildings, equipment and funds of the districts

with the power to employ and discharge all teachers and all school employees of the county schools. Section 73-9-8, N.M.S.A., 1953 Compilation (P.S.) specifies that the county board of education shall have the power to issue school district bonds in the manner authorized by law.

Within the administrative control of many county boards of education are one or more non-independent rural school districts which have by law a local board of school directors. The local board of school directors serve principally as an advisory body to the county board of education concerning the particular rural school district or they may also {**127*} serve as an agent for the county board of education in carrying out certain delegated ministerial duties, including repair and maintenance of school buildings and equipment within the non-independent rural school district. Section 73-9-8, *supra*, also specifies that the county boards of education "shall call upon the boards of school directors to nominate the teachers and school employees to be employed in their several districts, and to submit recommendations as to budget requirements."

Through the course of gradual legislative enactment and continued school consolidation programs the various boards of school directors of these non-independent rural school districts have had withdrawn many powers and duties which were once conferred upon them.

In **Thrall v. Grant County Board of Education** (1934) 38 N.M. 358, 33 P.2d 908, the New Mexico Supreme Court noted:

"Prior to 1917 the rural school district, within its limited sphere, possessed a considerable degree of autonomy. It was a body corporate, empowered to sue and be sued, to contract and to hold property required for school purposes. * * * The new and present state policy leaves little of the old self-governing, self-supporting district. The more important matters formerly under the control of the district itself and of its governing board are now in the hands of the county board of education. The latter has been endowed with corporate powers . . . At the same time the local boards have lost theirs"

Although the various county boards of education are vested with virtually full administrative control over all schools within the county system, nevertheless, the people of these non-independent rural school districts constituting "qualified voters" vote on the issue of whether school bonds will be issued. This power of the "qualified voters" of the districts within the county system was commented upon in the Thrall case, *supra*:

"In addition to electing directors, the people of the district possess, in their organized capacity, the single power to incur or refuse to incur a bonded indebtedness."

One of the significant reasons that the non-independent school districts have been retained, despite the fact that they no longer are self-governing administrative units, is based upon the necessity of preserving the district for tax assessment purposes. As stated in Section 73-20-4, N.M.S.A., 1953 Compilation, even though a school district

may be consolidated for administrative purposes, it may remain a separate entity for tax reasons. Section 73-20-4, supra, states in part:

"Whenever any school district consolidated hereunder shall have outstanding and unpaid any bonds or certificates of indebtedness, such district shall retain its identity for the purpose of debt service until such time as such bonds or certificates are paid in full. No district consolidated under the provisions of this act (citations) shall be or become responsible for the debt service of any other district included in such consolidation."

Section 73-8-39, N.M.S.A., 1953 {**128*} Compilation, provides that no bonds shall be issued by any school district which, in addition to the existing indebtedness of the district, creates a debt in the district "exceeding six percent of the assessed valuation of the taxable property therein, as such valuation is shown by the last preceding general assessment."

As seen by the foregoing, a county school system may have several non-independent rural school districts which have various school units located therein. The bonding capacity of one such school district within the county school system may have reached the permissible maximum, while the bonding capacity of another school district within the county system may be well below the six per cent maximum.

In our opinion, under Chapter 274, Laws 1963, the county board of education may make application to the Public School Plant Facilities Commission for state assistance to a non-independent rural school district within the county system, where a clear need is shown to exist and where the particular rural school district has made the maximum effort to effect such construction of school district facilities by bonding itself to the maximum capacity. As we view the provisions of the act, together with the historical pattern of evolvement of non-independent rural school districts, we do not feel that each district within the county school system must in such instance be bonded to the maximum capacity in order to qualify one district which has reached such maximum capacity, under the Act.

We distinguish, however, this result from the situation which may exist in counties wherein a county school system is in existence but does not have several subordinate rural school districts organized within it. In this latter case, it is our opinion that the entire area encompassed by the county system would then have to be bonded to its maximum capacity before being eligible to apply under the provisions of Chapter 274, Laws 1963 for financial assistance.

In your second question, inquiry is made as to how it is to be determined that the assessment ratio within the school district under consideration is at least equal to the average assessment ratio of the several counties of the state.

Section 5, Chapter 274, Laws 1963, provides that the Public School Plant Facilities Commission shall establish eligibility for state assistance upon certification by the Public School Finance Division that the administrative unit making application for such

assistance has made the maximum effort by bonding itself to the capacity permitted under law, and that: **"The assessment ratio within the district under consideration equals at least the average assessment ratio of the several counties of the state."**

The purpose of this requirement is to insure that school districts applying for such state assistance have made a bona fide effort to obtain the necessary academic classroom facilities, through selffinancing. Article VIII, Section 1 of the State Constitution provides that "taxes levied upon tangible property shall be in proportion to the value thereof . . ." Chapter 274, Laws 1963, requires that in order to qualify for assistance the district must show that the proportion of actual assessment of such district is at least equal to that of the average assessment ratio of the several counties of the State

{*129} In determining this fact, we believe the Public School Finance Division should first ascertain the approximate assessment ratio utilized by the county assessors of **each** county of the state based upon information supplied to it by the State Tax Commission and then take the mean figure ascertained by dividing the total number of counties into such figure to compute the average assessment ratio.

Once a determination of the average assessment ratio of each of the several counties is ascertained by the Public School Finance Division, then the Division should calculate the average assessment ratio of the owners of real estate within the school district applying for such state assistance. This figure may be computed by reliance upon figures supplied by the State Tax Commission to the division, showing the Tax Commission's estimation of such average assessment ratio within the district and as shown by the records, reports and data available to that office.

In respect to your third question, and as discussed in part in our analysis of Question 1 above, it is our opinion that it is not necessary that each non-independent district within the county system have an assessment ratio equal to the average assessment ratio of the several counties of the State, but that it is incumbent that the particular district within the county system applying for such State assistance have an assessment ratio equal to the average assessment ratio of the counties of the State.

By: Thomas A. Donnelly

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