

Opinion No. 65-112

June 23, 1965

BY: OPINION OF BOSTON E. WITT, Attorney General Oliver E. Payne, Deputy Attorney General

TO: Firman Haynie, Superintendent of Schools, Portales Public Schools, Portales, New Mexico

QUESTION

FACTS

On April 20, 1965 the voters in Portales Municipal School District No. 1., passed a school bond issue. The Notice of Election read as follows: "For the issuance of bonds of Portales Municipal School District, Roosevelt County, New Mexico in the total sum of \$ 600,000 for the purpose of erecting and furnishing school buildings in the said district."

QUESTION

May the Board of Education of the Portales Municipal School District No. 1 be permitted to use any part of the money derived from the sale of these bonds to repair and remodel existing school buildings?

CONCLUSION

No.

OPINION

{*191} ANALYSIS

Article IX, Section 11 authorizes school districts to borrow money for the purpose of erecting and furnishing school buildings or purchasing school grounds when the proposition has been voted upon favorably by the qualified electors of the district. Unlike Article IX, Section 10 relating to county indebtedness, there is no authority for school districts to borrow money for remodeling existing buildings.

Accordingly, the last legislative session enacted Chapter 150, Laws 1965 providing that school bonds may be issued "for any purpose allowed by Article IX, Section 11 of the Constitution of New Mexico." This law becomes effective on June 18, 1965.

Since Article IX, Section 11 does not now permit school districts to issue bonds for remodeling existing school buildings, the last legislative session also enacted Senate Joint Resolution No. 3 proposing an amendment to the constitution to permit the

remodeling and the making of additions to school buildings with school bond moneys. This proposed constitutional amendment will not be voted upon by the electorate until September 28, 1965.

In view of the fact that your school bond election was held on April 20, 1965, that the Notice of Election did not, and could not, refer to remodeling of existing school buildings, and that there was not at that time nor at the present time any legal authority to issue bonds for remodeling, we must conclude that the moneys derived from the sale of this particular bond issue cannot be used for remodeling.

In the case of **Board of Education of Gallup Municipal School District v. Robinson**, 57 N.M. 445, 259 P. 2d 1028, the Court analogized the situation there presented with the use of county bond moneys for remodeling a jail (at that time just as in the case of school buildings, the constitution prohibited the issuance of county bonds for purposes of remodeling necessary public buildings.)

Quoting from the decision in **Tom v. Board of County Commissioners of Lincoln County**, 43 N.M. 292, 92 P.2d 167 the Court said:

"In obtaining funds by issuing bonds for erecting public buildings, there must be substantial compliance with the Constitution and laws requiring notice to the interested electorate, of the purpose for which the funds are to be used, which purpose must be authorized by law, **and not be within the inhibition of the constitution; and by giving the electorate an opportunity to approve** or disapprove the issuance of the bonds, at an election held for that purpose." (Emphasis added).

In the case of the bonds approved at the April 20 election there was at that time (and there still is) a constitutional prohibition against the use of bond moneys for remodeling school buildings. Since such use was proscribed {**192*} by the constitution, the electorate was not, and could not have been given an opportunity to approve or disapprove the use of the moneys for remodeling purposes. Thus the answer to your question is no.