

Opinion No. 65-136

July 20, 1965

BY: OPINION OF BOSTON E. WITT, Attorney General

TO: Mr. Harry Wugalter, Chief, Public School Finance Division, Department of Finance and Administration, State Capitol Building, Santa Fe, New Mexico

QUESTION

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If a municipality has waived the 2 1/4 mill levy on property located within the municipality so that the school district may levy the full 4 1/2 mill levy on all property within the district including that within the municipality, may the school district then make a payment to the municipality of more than an amount equal to 2 1/4 mill on the property located within the limits of the municipality?

CONCLUSION

See analysis.

OPINION

{*227} ANALYSIS

For a number of years it has been the practice of some school districts to make a 4 1/2 mill levy on property in the district. The municipalities within the district have made no levy. The school districts have budgeted and paid to the towns an amount equal to that which would have been raised by a 2 1/4 mill levy on property within the town. At least two Attorney General's Opinions have been issued on this particular procedure and both have approved it. See Opinion Nos. 6265 and 65-17. Again we affirm those opinions, but we note the hazards pointed out in each and caution you that those hazards still exist.

As was pointed out in each of the two prior opinions there is no statute which fixes the division of the 4 1/2 mills between the school district and the municipalities within the district. As was pointed out in Opinion 6265 however, the power to make the determination of the amount of appropriate division rested with the State Tax Commission. That function has now been transferred to the Department of Finance and Administration and nothing has transpired which would diminish this power of the Department of Finance and Administration. It now, like the Tax Commission formerly, has the power to permit the levy of the 4 1/2 mills by either taxing entity. As stated in Opinion 6265 this power to divide the levy between the entities must not be arbitrarily

exercised but must be bottomed upon good and sufficient cause or reason and upon approved budget items.

It is therefore our conclusion that there is no set amount which should be paid by the school district to the municipality located within the district, but the determination as to how the 4 1/2 mill charge shall be divided rests with the Department of Finance and Administration and should be based upon good cause and exercised with caution.