Opinion No. 65-27

February 11, 1965

BY: OPINION OF BOSTON E. WITT, Attorney General Thomas A Donnelly, Assistant 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 local public school district is consolidated with another public school district and at the time of such consolidation has certain outstanding school bond indebtedness which is subsequently retired, may principal and interest fund balances from such original bond issue be transferred to operational budget items for the newly consolidated school district?

CONCLUSION

No.

OPINION

*{*48}* ANALYSIS

Under the facts as presented to this office, the Hachita School District was consolidated with the Silver City School District in 1959. At the time of such consolidation certain school bonds were out-standing against the Hachita District, and the bonds were fully retired in June, 1964, leaving a balance of approximately $ 3,464.00 remaining in the principal and interest fund account for such bonds. The Silver City Consolidated School District is considering the transfer of such balance overage to the district operational budget to accomplish roof and boiler repairs needed at the Hachita School.

From a careful study of the above facts, it is our opinion that such transfer would not be proper.

Article IX, Section 11 of the New Mexico State Constitution expressly provides:

"No school district shall borrow money, **except for the purpose of erecting and furnishing school building or purchasing school grounds,** and in such cases only when the proposition to create the debt shall have been submitted to a vote of such qualified electors of the district as are owners of real estate within such school district,

and a majority of those voting on the question shall have voted in favor of creating such debt. * * *" (Emphasis supplied)

The above constitutional provision permits bond monies to be applied only to "erecting and furnishing school buildings or purchasing school grounds" and does not permit the use of such funds for remodeling of school buildings. Additionally, Article IX, Section 9 of the State Constitution sets out:

"Any money borrowed by the state, or any county, **district,** or municipality thereof, **shall be applied to the purpose for which it was obtained, or to repay such loan, and to no other purpose whatever."**

The courts have consistently *{*49}* ruled in New Mexico that under the constitutional limitations discussed herein, that no part of general obligation bond funds may be diverted or applied to uses other than the original bond purposes no matter how deserving or necessary the secondary use might be. See **Scott v. City of Truth or Consequences,** 57 N.M. 688, 262 P.2d 780; **Board of Education of Gallup Municipal School District v. Robinson,** 57 N.M. 445, 259 P.2d 1028; **Tom v. Board of County Commissioners of Lincoln County,** 43 N.M. 292, 92 P.2d 167; and **Board of Education of the City of Aztec v. Hartley,** N.M. , decided August 27, 1964.

The above cited constitutional sections have application to the prohibitions existing against the expenditure of monies derived from the sale of school bonds and under the facts as herein set forth the situation involves a problem concerning monies which are not derived from the sale of school bonds, but constitute monies obtained from tax levies imposed upon property to repay the principal and interest of such school bonds. While the sources of the funds in these two situations are diverse, it is our opinion that the same restrictive features against the use of such monies apply.

Section 73-8-38, N.M.S.A., 1953 Compilation specifies that "annually the board of county commissioners shall levy a tax in the district sufficient to pay the interest and when necessary to provide for the sinking funds for said bonds, as herein otherwise provided."

We think that to permit the use of tax raised ad valorem funds for school operational purposes would be the allowance of an expenditure indirectly which could not be done directly. Additionally, a state constitutional provision would appear applicable. Article VIII, Section 4 of the state constitution sets out in part:

"Any public officer making any profit out of public moneys **or using the same for any purpose not authorized by law,** shall be deemed guilty of a felony and shall be punished as provided by law, and shall be disqualified to hold public office. * * *" (Emphasis supplied)

Examination of court decisions of other states reveals a number of opinions holding the expenditure of tax revenues for purposes other than that for which they are levied, to be improper.

In **School Dist. No. 40, Ford Co. v. Board of County Commissioners of Clark Co.** (1942) 127 P.2d 418, 155 Kan. 636, the syllabus by the court stated that "Where money is raised by a levy of taxes for a specific purpose it may not be diverted to another purpose."

In **School Dist. No. 2 v. Jackson -- Wilson High School Dist.** (1935), 52 P.2d 673, 49 Wyo. 115, the Supreme Court of Wyoming quoted with approval from a South Dakota decision, stating that: "So In Re Opinion of the Judges, 59 S.D. 469, 240 N.W. 600, 601, the court said: 'Secondly, and with particular reference to the possibility of employing moneys (either state or county) now on hand or to accrue under present levies, for the furnishing of feed or making of feed loans, Article 11, Section 8, Constitution of the state, provided: 'No tax shall be levied in pursuance of a law, which shall distinctly state the object of the same, to which the tax only shall be applied. Under this section we are of the opinion that moneys now on hand (or hereafter to be received) as the result of payment of taxes * * * already levied, and the proceeds of which have already been appropriated, must be applied to the purposes for which they were levied * * * and we think the same could not now be diverted, even by legislative action, to any other purpose." See also **Lone Star Gas Co. v. Bryan Co. Excise Bd.** (1943), 141 P.2d 83, 193 Okl. 13.

Thus, we determine that expenditure *{*50}* of the sum of money in question for school operational purposes is improper; however, since as a practical matter refunding such sum would be virtually impossible and prorating the sum to former taxpayers would be seemingly infeasible, we believe that such amount should be applied and credited against other current school district ad valorem tax levies against the taxpayers in such area, so as to in effect create a reduction and lessen the current tax burden against them. Such amount may be applied to new school district tax levies, but should not be paid over for operational expenditures of the school district.