

Opinion No. 65-61

April 7, 1965

BY: OPINION OF BOSTON E. WITT, Attorney General Thomas A. Donnelly, Assistant Attorney General

TO: Mr. John S. McKay, Business Manager, New Mexico School for the Deaf, 1060 Cerrillos Road, Santa Fe, New Mexico

QUESTION

QUESTIONS

1. May the New Mexico School for the Deaf legally pay any sums upon bonds of the institution issued pursuant to Section 11-9-1, N.M.S.A., 1953 Compilation, et seq., which are called for redemption prior to maturity, and which sums are in excess of the principal amount of such bonds plus the accrued interest to the redemption date of April 1, 1965?
2. May the Institution pay the principal of such bonds called for redemption if the interest coupons which mature subsequently on such bonds are not attached or presented at the date of redemption?

CONCLUSION

1. No, the New Mexico School for the Deaf may not properly pay on the scheduled date of redemption of such bonds any sums in excess of the principal amount of such bonds plus the accrued interest to date of April 1, 1965.
2. See analysis.

OPINION

{*101} ANALYSIS

The New Mexico School for the Deaf pursuant to Section 11-9-1, N.M.S.A., 1953 Compilation, et seq., (Institution Bond Act) issued its Series H Improvement Bonds, in November, 1964. Under the express wording of such bonds and the resolution calling for the issuance of the bonds it is provided:

"All bonds of this issue are subject to prior redemption in inverse numerical order at the option of the Board of the first day of April, 1965, or on any interest payment date thereafter prior to maturity, at a price equal to the principal amount thereof, with accrued interest to the redemption date. Notice of redemption shall be given by the Secretary-Treasurer in the name of the Board by publication of such notice at least once, not less

than thirty nor more than sixty days prior to the redemption date, in a newspaper of general circulation in the City of Santa Fe, New Mexico, and a copy of such notice shall be sent by registered mail at least thirty days prior to the redemption date to the original purchaser of said bonds herein authorized, to the paying agent, and to the state Treasurer, Santa Fe, New Mexico. Such notice shall specify the number or numbers of the bonds to be so redeemed (if less than all are to be redeemed), and the date fixed for redemption, and shall further state **that on such redemption date there will become and be due and payable upon each bond so to be redeemed the principal amount thereof with accrued interest to the redemption date, and that from and after such date interest will cease to accrue.** Notice having been given in the manner herein before provided, the bond or bonds so called for redemption shall become due and payable on the redemption date so designated, and upon presentation {**102*} thereof at the said bank, **together with all appurtenant coupons maturing subsequent to the redemption date, the Board will pay the bond or bonds so called for redemption.**" (Emphasis supplied).

Under the facts presented to this office it appears that the Board of Regents of the institution by proper resolution determined to call for redemption fifty \$ 1,000.00 bonds issued by the institution, Series H. Building and Improvement Bonds, specifying April 1, 1965 as the date of redemption of the enumerated bonds. Legal advertisement was made in a newspaper of general circulation in Santa Fe County, New Mexico, on February 23, 24 and 25, 1965, over thirty days prior to the date of redemption and not more than sixty days before such date.

As noted in the bond resolution and bond provisions set forth above on the redemption date only the principal amount of the bond redeemed plus accrued interest to date of redemption may be properly paid. Thus, we find it clear that the Institution may properly pay out only the principal amount of the bonds together with accrued interest to such date of redemption and not other sums.

In your second question you have posed the issue of whether it would be proper to pay the principal of the particular bonds to be redeemed if the interest coupons on such bonds are not presented with the bonds. We find that under the bond provisions and bond resolution it is set forth that such bonds will be redeemed on April 1, 1965 upon presentation thereof **"together with all appurtenant coupons maturing subsequent to the redemption date."** We think that patently this requirement necessitates that the bond holder present with the bond all appurtenant coupons which mature subsequent to the redemption date in order to be paid for the bonds and any accrued interest to date of redemption.

As noted in 11 C.J.S., "Bonds", Section 65, "Interest Coupons", at page 437, it is stated:

"Interest coupons attached to negotiable bonds, when payable to order or to bearer at a time and place stated, are negotiable promissory notes, subject to the rules governing negotiable instruments, and when detached from the bond possess all the attributes of negotiable paper. * * * On detachment, such coupons may be negotiated separately by

simple delivery, provided that are payable to order or to bearer; and this rule applies after the bond itself has been paid and satisfied as well as before. Coupons once detached and negotiated cease to be mere incidents of the bond and become independent claims, unless they refer to the bonds for their terms and conditions. * * *

As seen from the same authority, 11 C.J.S., "Bonds," Section 71, at page 71, "Interest Coupons", it is also noted that:

"If interest coupons are negotiable in form and cut from the bonds they may be treated as negotiable securities, . . . and, accordingly, presentment, protest, and notice to hold an indorser may be required. However, the rule is altogether different with regard to coupons allowed to remain attached to the bond; the coupons are mere incidents of the debt as long as they remain attached to the bond, and the same act which fixes the liability of the indorser for the debt equally fixes his liability for the interest, the payment of which is expressly stipulated for in the bond."

Section 50A-8-405, N.M.S.A., 1953 Compilation, sets out the procedure to be followed in the event that a security has been lost, destroyed or stolen and provides a means whereby an owner {*103} may obtain a new security or bond.

In our opinion both under the express provisions of the bonds to be redeemed and the bond resolution, it is necessary that the institution pay the principal and accrued interest to date of the redemption of such bonds, only when the appurtenant coupons maturing subsequent to the redemption date are presented. This feature is necessary to protect the institution from the possibility that such coupons may be determined to be negotiable and might be presented at a later date for payment. We, however, do not herein endeavor to pass upon the question of whether such bond coupons are or are not actually negotiable in fact.