

Opinion No. 68-29

February 28, 1968

BY: OPINION OF BOSTON E. WITT, Attorney General

TO: Mr. H. L. Willoughby Superintendent Aztec Municipal School District No. 2 Aztec, New Mexico

QUESTIONS

Must a board of education of a local school district obtain approval from the board of county commissioners before investing idle operational cash in bank time deposits or in United States treasury bills?

CONCLUSION

See analysis.

OPINION

{*52} ANALYSIS

The 1965-1966 edition of the New Mexico Public School Finance Statistics published by the Chief of the Division of Public School Finance of the Department of Finance and Administration shows that forty-seven school districts with total operational resources of \$ 94,612,000.00 reported interest earnings of \$ 463,402.00 on investment of operational funds only. Forty-four school districts, with total operational resources of \$ 35,642,000.00 reported no earnings from investment of operational funds. Operational funds of the state which are not necessary to meet expenses of state government for the ensuing quarter may not be deposited in non-interest-bearing accounts. Section 11-2-25.1, N.M.S.A., 1953 Compilation. However, as will be seen below this is not the case when public moneys are held in custody by boards of {*53} finance other than the State Board of Finance.

Because of the earnings made by the forty-seven school districts investing their operational funds, all school boards have been encouraged to invest, whenever possible, operational funds not immediately needed for the operation of the school district.

Except for the cafeteria funds or school activity funds, all revenues for public schools are kept by the county treasurer when the school board is not its own board of finance. Section 77-6-41, N.M.S.A., 1953 Compilation. Section 77-6-42, N.M.S.A., 1953 Compilation sets forth when a local school board may be designated as its own board of finance by the Chief of the Public School Finance Division of the Department of Finance and Administration. For one reason or another a number of school boards have not

been designated as their own board of finance and therefore their operational revenues are held by the county treasurer.

Section 11-2-4, N.M.S.A., 1953 Compilation provides that the county treasurer of each county shall have supervision of the deposit and safekeeping of all moneys which may at any time come into their possession as county treasurers. Before depositing these moneys, however, the county treasurers must seek the advice and consent of their respective boards of finance. The board of county commissioners in each county in this state constitutes a county board of finance for all school districts, other than those school districts which have been designated as their own board of finance pursuant to Section 77-6-42, supra. Section 11-2-4, supra.

Section 11-2-18, N.M.S.A., 1953 Compilation provides in part that:

Any board of finance may, whenever in its opinion such a course is advisable and the public moneys under its control or any part thereof will not be needed immediately for public purposes, place such funds on time deposit taking the certificate of deposit or other evidence of indebtedness of the bank receiving such deposit.

Section 11-2-7, N.M.S.A., 1953 Compilation provides in part that county treasurers by and with the advice and consent of their respective boards of finance shall have the power to invest all moneys not immediately necessary for the public uses of school districts in bonds or negotiable securities of the United States of America. There is no requirement that moneys not used for the immediate needs of school districts be deposited in non-interest-bearing accounts. Whether or not these operational funds are invested is left to the discretion of the board of county commissioners when the school board of the district is not its own board of finance.

It is therefore the opinion of this office that when the board of county commissioners is the board of finance for a school district, the board of education for the school district must obtain the approval of the board of county commissioners before investing idle operational cash in bank time deposits or in United States treasury bills.

By: Gary O'Dowd

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