

Opinion No. 70-03

January 16, 1970

BY: OPINION OF JAMES A. MALONEY, Attorney General

TO: Harry Wugalter, Chief Public School Finance Division Department of Finance and Administration Legislative-Executive Building Santa Fe, New Mexico

QUESTIONS

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1. Is it legal for an incorporated municipality to assess a public school district for street maintenance after the school has paid for the initial paving of the street?
2. Must a local board of education budget revenues with which to pay for such maintenance, if it is determined that such charges are legal, from existing revenues available, or can the local board legally request an additional property tax levy, outside the 20-mill limitation?

CONCLUSIONS

1. See analysis.
2. See analysis.

OPINION

{*6} ANALYSIS

There are two methods of improving the streets within a municipality. The first is through the creation of an improvement district pursuant to Sections 14-32-1 through 14-32-38, N.M.S.A., 1953 Compilation. If this method is followed, the legislature has provided a method of making a levy by a school district to pay for the assessment against any tract or parcel of land owned by the school district which is benefitted by the improvement district. Such a levy is made pursuant to Section 14-32-26, N.M.S.A., 1953 Compilation which provides as follows:

Improvement district -- Public institution boards directed to pay installments for assessments. -- Boards of regents, boards of trustees and other governing bodies of educational, or other quasi-municipal or public corporations or institutions, and boards of county commissioners and the governing bodies of other political subdivisions of New Mexico are specifically authorized and directed to make levies to pay any assessment and installment on the assessment on any tract or parcel of land owned by the said

educational or other public institution and political subdivision, and which is assessed by the municipality.

The purposes for which an improvement district may be created are set forth in Sections 14-32-3 through 14-32-3.2, N.M.S.A., 1953 Compilation. Assessments against school districts for street improvements pursuant to Section 14-32-26, supra, are limited to the scope of the improvements set forth in Sections 14-32-3 through 14-32-3.2, supra.

Next we are asked how such assessments are to be paid by the school District. In Opinion of the Attorney General No. 68-102, issued October 11, 1968, this office concluded that a school district could not lawfully levy taxes outside the constitutional 20-mill limit in order to pay assessments { *7 } against land owned by the school district by reason of the inclusion of the land in a municipal street improvement district. This levy should be budgeted and paid for by the school district out of its operating budget if the 20-mill limitation has been reached. If the 20-mill limitation has been reached the school district should be asked to consent to the improvement prior to "construction."

Municipalities may also finance street sprinkling and maintenance by following the provisions of Section 14-50-3, N.M.S.A., 1953 Compilation. However, if this provision is followed, there is no authority for the municipality to make an assessment against a school district to pay the cost of watering or maintaining the streets. Section 14-50-3D, supra, which provides for the method of enforcement, does not refer to Section 14-32-26, supra. This does not mean that a school district which has benefited from street sprinkling and maintenance may not budget and pay for such services when they are rendered by a municipality pursuant to Section 14-50-3.

By: Gary O'Dowd

Deputy Attorney General