

Opinion No. 13-995

February 23, 1913

BY: FRANK W. CLANCY, Attorney General

TO: Mr. Rupert F. Asplund, Chief Clerk, Department of Education, Santa Fe, N. M.

SCHOOL DISTRICT.

Judgment against school district cannot be paid from proceeds of a bond issue.

OPINION

{*160} I have received your letter of the 21st instant concerning a bond election in the school district of Fort Sumner. It appears from what you write that bonds have been heretofore issued for the purpose of erecting a school building, the proceeds of which were not sufficient to complete the building, and that labor and material in order so to complete the building have been paid for out of the current school fund of the district, warrants drawn upon that fund not having all been paid. For fear of running short of funds to maintain the school it is planned from the proceeds of the bond issue now contemplated, to pay the outstanding warrants and to reimburse the current school fund for payment made therefrom for completing the building and to provide for the payment of a judgment against the district.

I agree with you that any judgment against the school district cannot be paid from the proceeds of a bond issue, but should be paid out of the proceeds of a tax levy for that purpose as provided in Section 13 of Article VIII of the Constitution. I assume that the proposed bond issue must be under Section 1541 of the Compiled Laws of 1897, which authorizes issues for the purpose of erecting and completing school houses, and it seems quite clear that the proceeds of such bonds can be used for no other purpose than those specified in the statute. There is nothing to prevent a school district from paying for a school building from its ordinary revenues, and if money has been so paid out there was nothing improper about the payment. I believe with you that proceeds of the bonds could be properly used to pay warrants which have been drawn on account of the construction of the building, but not yet paid; but I do not think it is quite so clear that the school fund can be reimbursed for money already paid out. As the district could, however, have issued bonds to obtain money to complete the school building before making any payment from the current school fund, I see no good reason why the reimbursement of that fund cannot be considered as a payment for {*161} the completion of the school building, considering the payment which has been made as merely an advance for that purpose.