

## Opinion No. 15-1576

July 5, 1915

**BY:** FRANK W. CLANCY, Attorney General

**TO:** Mr. W. L. Paddock, Farmington, New Mexico.

**Tax levies for purposes of grounds and erection of school buildings thereon.**

### OPINION

{\*152} Yesterday I received your letter of the 1st instant in which you say that your board of education desires to purchase school grounds and erect a school building, and that items for these purposes have been included in the budget submitted to the county commissioners, and you desire to know if the county commissioners can make a levy for these items, or must the funds be raised by an issue of bonds, after voting thereon. You further ask, if the commissioners are permitted by law to make such a levy, may the board of education draw warrants against the uncollected fund. You further ask whether funds may be transferred from one fund to another, and whether the board of education can draw warrants against uncollected back taxes, applying same to the purchase of school grounds.

{\*153} It was quite proper to include in the estimates submitted to the board of county commissioners the sums intended for purchase of land, construction, equipment, repair or leasing of buildings, and the county commissioners, by Section 6 of Chapter 79 of the Laws of 1915, are authorized to levy a tax upon the taxable property within every school district to pay for the purchase of site for, purchase, construction and first equipment of school houses, as well as the interest and sinking fund for the payment of any indebtedness of the district. While the county commissioners have that power, yet as a practical question it would seem to be improbable that there could be levied in a single year upon the property of any district a tax large enough immediately to pay for ground and construction and equipment of school houses. If this view is correct it would seem necessary to provide the funds for such purposes by the issue of bonds, and it would then be the duty of the county commissioners, from year to year, to levy a tax which would provide for the payment of bonds, both interest and principal.

I do not understand that any school district can draw warrants against money not yet in the treasury. The treasurer could not possibly pay such warrants, and the statute, which you will find in Sections 299 to 305 of the Compiled Laws of 1897, forbids the incurring of any debts during any current year, which at the end of such year, cannot be paid out of the money collected and belonging to that current year, and any violation of the provisions of the act is made a misdemeanor punishable by fine or imprisonment, or both. I know of nothing which has changed this statute.

As to whether moneys may be transferred from one fund to another under the system created by Chapter 79, I am not quite certain as to what your question calls for. By Section 7 of that act the proceeds of the school tax for municipal districts are to be paid into the treasury thereof, and I do not discover anything in the act as to any check upon the use of that money by the municipal-school district. The only check upon those districts seems to be the approval by the county commissioners of the estimates and the levying of a general tax to provide the funds to meet those estimates, and in addition, a tax in each school district in accordance with Section 6, to pay for ground and construction of school houses. In levying that latter tax there seems to be no division of the proceeds of the tax to the different purposes specified in that section, and there seems to be one tax upon the property in the district for the purposes specified. In other words, there does not seem to be any provision made for supervision of the expenditure of the moneys in a municipal school district by any authority known, nor is it clear that the proceeds of the tax are to be divided into any separate or distinct funds.