

Opinion No. 19-2430

November 18, 1919

BY: N. D. MEYER, Assistant Attorney General

TO: Mr. Earl Douglass, Aztec, New Mexico.

School Warrants and Finances.

OPINION

A few days ago the District Attorney of your district asked our office to give an opinion on your letter addressed to us of October 31, and which had been previously answered. As we are by law made the adviser of district attorneys we now feel at liberty to take up the matters contained in your letter, and express an opinion thereon.

You refer to section 1227, and state that you would like to have our interpretation in regard to the limitation placed upon a municipal or county board of education in issuing warrants.

The section to which you refer, as far as it is material to the question reads:

"After March 12, 1897, it shall be unlawful for any board of county commissioners, city council, town trustees, board of education, board of trustees, or board of school directors of any school district, for any purpose whatever to become indebted or contract any debts of any kind or nature whatsoever during any current year which, at the end of such current year, is not and cannot then be paid out of the money actually collected and belonging to that current year, and any and all kind of indebtedness for any current year which is not paid and cannot be paid, as above provided for is hereby declared to be null and void"

This section is a part of what is commonly known as the Bateman Act, and in substance it makes it unlawful to contract any debts during any current year which at the end of that year cannot then be paid out of the money belonging to that current year, and any indebtedness which cannot be so paid is declared to be null and void.

However, this section is somewhat modified by section 1230 of the Code, which provides that the void indebtedness mentioned in section 1227 shall remain valid to the extent and for the sole purpose of receiving any money which may afterward be collected and belongs to the current year when the debt was contracted.

In arriving at an interpretation to be placed upon these two sections it is necessary to consider in connection with said sections the provisions of section 4855 of the Code of 1915 as amended by section 17 of Chapter 105 of the Laws of 1917, and which reads as follows:

"No board shall issue warrants or certificates of indebtedness of the school district, in excess of the amount of the levy for one year, but all school orders, shall draw six per cent interest per annum after having been presented to the County Treasurer and not paid for want of funds, which fact shall be endorsed upon the order by the Treasurer; and when there is sufficient money in the treasury to pay any such order the president and secretary of the County Board of Education shall draw an order for the interest due on said order and further interest shall cease from date of such order."

In view of the foregoing provisions of law, your first question is answered by stating that the county board of education may lawfully issue warrants to the amount of the levy for the year in which said warrants are issued and they are not limited to the amount of money actually collected.

If the amount of taxes which are collected in any one current year is less than the estimated revenue under the levy for that year and not sufficient to pay outstanding warrants then the indebtedness shall be reduced to the amount which the amount of money collected will cover, according to section 1228 of the Code, so warrants or parts of warrants that cannot be paid because of the failure of the collection of taxes of the year in which the warrants were issued become null and void.

I might mention in this connection that it has come to our attention that in some counties the district attorneys have permitted judgment to be entered against the county in suits based upon such unpaid warrants, then, of course, a levy could be made to fill the judgment fund for the purpose of paying these judgments.

You also ask if the County Commissioners and the State Tax Commission, acting on the request of the County Board of Education, can make a levy to pay unpaid school warrants for previous years.

We are of the opinion that this cannot be done. It will be noted that section 5 of Chapter 79 of the Session Laws of 1915, provides the specific method of levying taxes for school purposes, and this is to be done at the time of levying other taxes in a sufficient amount to produce a revenue for this purpose to maintain the respective school for the periods of time specified in said section, and no other or further method is prescribed to make levies for school purposes.

In answer to your question as to what per cent of delinquent taxes of other years should go to the school funds, and if this money can be used to pay old school warrants, we beg to refer you to section 9 of Chapter 102 of the Session Laws of 1919, which provides the method of distributing delinquent taxes accruing before January 1, 1915, and reads as follows:

"That portion of such taxes levied for state purposes shall be paid to the State Treasurer and covered into the State Road Fund; all of the remainder of the said taxes shall be covered into the County Road Fund; Provided, that no portion of such remainder shall be covered into such County Road Fund until outstanding valid floating indebtedness of

such county, evidenced by certificates issued or claims approved by the county commissioners prior to January 1st, 1915, which should have been paid from the proceeds of such levies, respectively, shall have been paid therefrom."

This section means that if any delinquent taxes which accrue prior to January 1, 1915, are collected and there is any indebtedness against the county, that so much of said delinquent taxes collected as would have gone to the fund for which the levy was made would be liable and should be used to pay said indebtedness.

There is no defined per cent of delinquent taxes that should go to the school fund. All of the taxes collected upon a levy made for school purposes shall go to the school fund and should be used to pay the indebtedness which accrued for the year for which the levy was made only, and cannot be used to pay expenses incurred during any other year besides that for which the levy was made.

You further ask the question whether the treasurer is compelled to pay warrants that are a year or two old in preference to paying warrants issued for the expenses of the current year.

I think that what has already been said in this letter answers this question.

If I have been able to make myself clear, you will understand that my opinion is that the treasurer should pay the warrants of each year out of moneys collected upon levies made for the particular year for which the warrant was issued. Thus it follows that warrants issued for the expenses of the current year should and must be paid from the collection of taxes for this year and no funds accruing from the current year's taxes can be used to pay warrants of previous years.

In regard to the power of the board of education to borrow money to pay teachers' salaries for this year and pay a rate of interest of 8 per cent, I will say that I know at the present time of nothing in the law which would prevent this course. However, it must be borne in mind that for the purpose of paying any debt contracted by the board of education resort can be had only to the funds which accrue from the levy for this purpose for this year.

What has already been stated will answer your last question in regard to whether the county treasurer should pay the indebtedness contracted this year out of taxes that are paid in December or the warrants issued in previous years.