

Opinion No. 21-3201

December 3, 1921

BY: HARRY S. BOWMAN, Attorney General

TO: Hon. A. G. Whittier, State Traveling Auditor, Santa Fe, New Mexico.

Interest Upon Money Borrowed for Public Use Not Chargeable to Borrowing Official.

OPINION

{*102} In reply to your letter of the 1st inst., asking for advice relative to the legality of charges made in your report of the audit of the Superintendent of Public Instruction and the State Board of Education against the account of former Superintendent J. H. Wagner for \$ 120.84, interest paid by Mr. Wagner for moneys borrowed for the payment of expenses for the office of the superintendent, I wish to advise you as follows:

{*103} You state that the money for which the amount of interest above mentioned was paid, was used to pay the traveling expenses of the superintendent.

In Mr. Wagner's reply to the statement as made, which reply you have quoted in your letter, it would appear as if the money was borrowed for the purpose of the payment of expenses of the office.

The question involved concerns the right of the Superintendent of Public Instruction to pay interest out of public funds for moneys borrowed for the payment of the expenses of the office, whether such expenses be those incurred in traveling in the performance of the duties of his office or for other purposes.

It probably must be conceded in the outset that the expenses incurred in traveling are necessary to the proper exercise of the duties of the Superintendent of Public Instruction. No question as to the propriety of the expense incurred is raised.

With this premise let us consider whether a state or any department thereof should require its officials to pay the normal expenses of operating the department.

It would hardly be considered a dignified procedure for a sovereign state to demand that those who are elected by the people to perform official duties should be required to pay for the privilege of being so designated. Neither can we conceive of any just reason why an official should be compelled to pay interest upon moneys borrowed, which moneys are necessary for the proper administration of the duties of the office.

A state would be no more justified in demanding that its officials be required to pay interest on funds borrowed in order to maintain the governmental functions of the state

than would an individual be justified in demanding that the state pay interest on funds required by him for his own personal use.

The moneys in question were borrowed for the purpose of enabling Mr. Wagner to properly function in his office, and whether they were expended for traveling or other expenses of the office, in our opinion, he not only should not be required to pay the interest which accrued upon the loan, but on the contrary, he should not be permitted to do so.

In our opinion the charge of \$ 120.84, interest, against Mr. Wagner's account, paid out of state funds by Mr. Wagner for moneys borrowed for the purpose of enabling the State Department of Education to carry out the duties of the office, should be cancelled.