

## Opinion No. 24-3773

July 17, 1924

**BY:** MILTON J. HELMICK, Attorney General

**TO:** Requested by: Hon. A. N. Corneil, Director of Audits, Santa Fe, New Mexico.

### **Provision for Certificates of Indebtedness of School District Contained in School Code is Constitutional.**

Distinction Between "Borrowing Money" and "Advance of Money."

#### **OPINION**

{\*152} Attention is called to Sec. 810, Chap. 148, Laws 1923, commonly known as the School Code where the following language occurs:

{\*153} In anticipation of tax collections, the County Board of Education, with the consent of the Educational Budget Auditor, may borrow money for the actual amount necessary for school maintenance for a period not in excess of ninety days, upon certificate of indebtedness of the district bearing interest not to exceed six per cent per annum from date of delivery. The money thereafter first credited to the school maintenance fund of the debtor district shall be paid in satisfaction of such certificates.

Inquiry is made whether this section of the School Code is valid in view of the provisions of Sec. 11, Art. 9 of the State Constitution as follows:

No school district shall borrow money except for the purpose of erecting and furnishing school buildings or purchasing school grounds, and in such cases only when the proposition to create the debt shall have been submitted to the qualified electors of the district, and approved by a majority of those voting thereon, \* \* \*

The thing denounced by the Constitution is the borrowing of money by a school district whereby additional liabilities are placed upon the property of the district and additional levies are required to repay the indebtedness. It seems to me that the plan provided for by the School Code does not constitute "borrowing money." It is a mere arrangement whereby money derived from levies which have previously been made, in accordance with the budget, can be obtained in the form of an advancement prior to the actual collection of taxes. The plan outlined in Sec. 810 does not place any additional liability upon the property of the district nor require any additional tax levy nor any additional tax burden. Strictly speaking, the anticipation of tax collections is not "borrowing money." It is rather an "advance" of money and many courts have held that an advance of money does not necessarily constitute a loan of money and hence the agency receiving the money could not be said to be a borrower. In the case of *Broch v. French*, 116 Ill., App. 15, in discussing an analogous situation to that presented by this inquiry, the court said:

The transaction between a member and the association called borrowing, is simply allowing the member to receive money on his share of stock in advance of their maturity in pursuance of the plan and purpose of the association.

It seems to me that this language of the court is applicable to the situation here and that the plan authorized by Sec. 810 of the School Code, while it may be called "borrowing money," yet it is not the same thing which is prohibited by the Constitution of the State and it is therefore my opinion that Sec. 810 of the School Code is not unconstitutional.