

Opinion No. [30-84]

September 5, 1930

TO: Office of the Attorney General of New Mexico

SCHOOLS -- May not issue bonds after July 1st in any year.

OPINION

Before us is your letter of the 4th inst. in re Catron County School District bonds in the aggregate sum of \$ 8,500.00 for bonds of School Districts numbers 17, 22, 32, 43, and the proposed purchase thereof by the State Treasurer. You advise that the Board of Finance is willing to recommend that the State Investment Board purchase these bonds, providing it can legally be done.

The legality of these bonds, if issued subsequent to July 1, 1930, was submitted to us by Herbert H. Cowan, County School Superintendent of Catron County, in a letter bearing date August 5, 1930. Our opinion, rendered August 7, will advise you of our conclusions relative to the issuing of such bonds under the conditions set forth by Mr. Cowan. We are yet of the opinion expressed at that time, and are attaching hereto a copy of that opinion as our reply to your request.

You will note that that opinion is based on the hypothesis that all procedure, including the advertising and sale of the bonds, had been regular, all things having been completed prior to July 1st except the delivery of the bonds. There are, however, other circumstances, a consideration of which we are of the opinion should enter into this.

Under date July 2, 1930 there was transmitted to this office by Sarah H. Fraser, County Treasurer of Catron County, a certified copy of a contract or agreement made and entered into the 23rd day of June, 1930, between the Board of County Commissioners of Catron County and Joseph D. Grigsby and Company, Incorporated, a Colorado corporation. By the terms of this agreement the Board of County Commissioners agreed to pay to Grigsby and Company the sum of \$ 850.00 in advance and permit that sum to be deducted by Grigsby and Company from the purchase price of these bonds in the event Grigsby and Company should become the purchasers thereof. The \$ 850.00 so to be deducted from the purchase price was declared to be compensation to Grigsby and Company for acting as paying agents for the Board of County Commissioners outside the State of New Mexico for the payment of principal and interest on these bonds. In our opinion, this was but an attempt to discount the bonds 10%, and on the face of it, unlawful, ultra vires and unenforceable in view of the provisions of chapter 201, New Mexico Session Laws of 1929, as follows:

"None of such bonds shall be sold at less than par and accrued interest to the date of delivery to the purchaser, nor shall any discount or commission be allowed or paid on the sale of such bonds."

Under date July 7, we expressed the opinion above expressed in a reply to Sarah H. Fraser, County Treasurer, and it is our understanding and information that this opinion being reported to Grigsby and Company, such Company declined to take the bonds.

We have not seen nor have we been advised, as to the form of the bid made by Grigsby and Company, but whatever it may have been, we are convinced that the bid, as made, was understood by Grigsby and Company and the Board of County Commissioners to be contemporaneous with and to be construed and considered with the agreement for a discount of 10% for acting as paying agent to pay to themselves money which might be sent by catron County as principal and interest on the said bonds.

In view of the foregoing, we are of the opinion that the bid to pay par and accrued interest, if such a bid was made, was not an unconditional bid, but included the provision for a discount of 10%, and that the recitals contained in the request for an opinion by Mr. Cowan were conclusions of law in which conclusions we do not concur; that in fact these bonds were not sold prior to July 1st, and of course it was conceded that they were not delivered. As expressed in our opinion rendered Mr. Cowan, to which reference has been made, we think that the failure of delivery prior to July 1st raised a serious question as to the validity of the bonds, and to this we now add the further objection that there was not even a sale prior to July 1st.

Under all the circumstances we are very doubtful of the binding obligation of such bonds upon the School Districts issuing, should such Districts, or any one of them, repudiate the bonds in the future, or a suit be brought to enjoin payment.