

## Opinion No. 31-121

April 10, 1931

**BY:** E. K. Neumann, Attorney General

**TO:** Mr. Byron O. Beall, Chief Tax Commissioner, Santa Fe, New Mexico.

{\*61} Your letter of April 4th, in regard to House Bill No. 194, was received yesterday due to the fact that same was addressed to Carlsbad, and, of course, had to be forwarded here.

You wish to know if the tax levy provided for in this bill is applicable in the county as a whole for the construction of buildings or the purchase of equipment in a specific district. That is, whether it is possible to so construe this act as to impose a 5 mill county levy and apply the proceeds for the benefit of an individual district.

You state that it is your opinion that this cannot be done, and that such application closely approximates taxation without representation.

It seems to the writer that the case of Raynolds vs. Swope, cited in 28 New Mexico Reports at page 141 is authority for the proposition that taxes levied in a county for school purposes are county taxes and do not violate any constitutional provision by reason of the fact that the proceeds are used in a particular district.

That case construed a tax measure of the legislature of 1917 also an act of 1915 and in which a question very similar to the one you present was involved. It was alleged in the complaint that a great portion of the taxes collected under the county levy were to be distributed to other districts and that the tax payer was taxed for the benefit of districts in which he and others similarly situated had no interest. The petitioners prayed for an injunction to restrain the county treasurer from paying to the County Board of Education any portion of the levy collected within the Albuquerque district, and the Court was asked to declare the act unconstitutional.

It was contended that each school district must be self-supporting and maintain its schools exclusively from its own resources, but the Court was of the opinion that such position was not founded upon any constitutional or statutory authority. The Court was of the further opinion that the principle that one district may not be taxed for the benefit of another district was not applicable to a matter of this nature, and stated in the opinion that where there was a county tax levied actually and uniformly upon all property in the county for the carrying on of education, which was a public purpose, it was not a special tax levied against the property in one district, the proceeds of which were to be used in some other district.

The opinion is quite lengthy and we suggest that you will find it interesting to read the entire case, and we must hold that, in so far as this point is concerned, the general

county tax, as provided for in the act, may be levied and the proceeds applied as directed by the State Tax Commission.

Your second proposition involves the question as to whether or not the proceeds from this levy may be used to liquidate prior certificates of indebtedness, issued in school district No. 16 of Lea County.

It is our opinion that the act is not sufficiently comprehensive to include such past indebtedness, and that it was not the intention of the legislature that such indebtedness be liquidated in this manner. This comes quite close to the proposition of a diversion of the proceeds from a tax to a purpose other than that for which the levy was made.

Trusting the above sufficiently answers your inquiry, I am

By: Frank H. Patton,

Assistant Attorney General