

Opinion No. 34-765

May 24, 1934

BY: E. K. NEUMANN, Attorney General

TO: Mr. W. G. Donley, Superintendent, Carlsbad Public Schools, Carlsbad, New Mexico.

{*134} This is in reply to your letter of May 16, 1934, in which you ask for an opinion of this office upon the question of whether or not a tax levy for the purpose of paying special assessments for paving abutting on property owned by a school district comes within the 20-mill limitation imposed by the constitutional amendment adopted by the people of this state at the special election held September 19, 1933.

There are two methods of providing for municipal paving, the "provisional order" method and the "petition" method. *Ellis v. N.M. Const. Co.*, 27 N.M. 312. Sections 90-1212 to 90-1230, 1929 Code. Under either method of making assessments for {*135} paving purposes, it appears to me that a debt is created against the property owner whose property is benefited. Under the 1913 law (the "provisional order" law), it is provided that the cost of such improvement may be assessed against "such property owners or their property." Section 90-1222, 1929 Code. In the case of paving which abuts upon school property, the "property owner" would be the school district and the debt created would be a "public debt."

It should further be noticed that Section 90-1224 of the 1929 Code provides that the lien of any such assessment may be enforced against "counties, **school districts** and municipal corporations" in the same manner as judgments are enforced.

All of the foregoing leads me to the conclusion that taxes levied for the purpose of paying paving assessments against property owned by a school district are "necessary levies for public debt" and therefore do not come within the 20-mill limitation imposed by Constitutional Amendment No. 4, at page 541, Session Laws of 1933, which was adopted at the special election held on September 19, 1933.

By: QUINCY D. ADAMS,

Asst. Attorney General