

Opinion No. 38-2047

September 13, 1938

BY: FRANK H. PATTON, Attorney General

TO: Mr. Jas. J. Connelly State Treasurer Santa Fe, New Mexico

{*273} This will acknowledge receipt of your letter dated September 10 making inquiry as to the sources of revenue available for the payment of Certificates of Indebtedness issued under authority of Section 13, Chapter 232, New Mexico Session Laws of 1937.

As I understand it, at the close of the last fiscal year, there was a deficit of \$ 130,332.58 in the "Appropriation Account." In order to cover this deficit and pursuant to Section 13, Chapter 232, New Mexico Session Laws of 1937, Certificates of Indebtedness were issued in the sum of \$ 130,000.00 to reimburse such Appropriation Account. This deficit having been thus wiped out, the question remains as to the sources of revenue lawfully available to you for the retirement of these now outstanding certificates.

{*274} In the first place, Section 13, Chapter 232, New Mexico Session Laws of 1937, provides in part as follows:

"The State Auditor shall create a fund to be known as the 'Casual Deficit Fund,' and to provide for the payment of the interest and principal of the certificates authorized by this section. It shall be the duty of the State Tax Commission, annually, beginning with the twenty-fifth or subsequent fiscal year, to levy a tax on all taxable property in the State of New Mexico sufficient to produce the amount required to pay the interest on such certificates as may be issued, if any, and not less than fifty (50) percentum of the principal thereof, for each and every year, for the term of not more than two years, and the State Tax Commission, when certifying to the boards of County Commissioners of the respective counties the levy for State taxes, shall include therein the levy hereby authorized."

Standing alone the foregoing portion of the law might seem to limit the source of revenue for retirement of these certificates to a levy made for such a purpose thereunder. However, said Chapter 232 in no way attempts to repeal any prior existing law on the subject nor is there such an inconsistency with prior acts as to warrant an interpretation of any repeal by implication of prior acts then in force. Since, as will hereinafter be pointed out, by virtue of prior acts, other funds are made available for the retirement of such certificates, and since these prior acts have not been repealed, it appears that by that portion of Section 13, supra, above quoted, the Legislature has merely added to its prior sources of revenue for the payment of these certificates, another source, namely, by virtue of a levy made by the State Tax Commission on taxable property. Apparently the State Tax Commission has likewise thus interpreted the act because as I understand it, the Commission has not made a sufficient levy for the coming year to produce the amount required to pay the interest on such certificates

plus not less than fifty (50) percent of the principal thereof. Rather, the Commission has cut the levy down apparently on the basis of an anticipated source of revenue for such purpose from these other sources which we shall now set out.

In view of the present status of our law, it is my opinion that the monies raised by levy made by the State Tax Commission pursuant to Section 13, Chapter 232, New Mexico Session Laws of 1937, is not the only available source of revenue applicable towards the payment of the principal and interest of these outstanding certificates of indebtedness.

In addition thereto it is my opinion that twenty-five (25) percent of the income taxes collected subsequent to July 1, 1938, after deducting the necessary amount for the "Income Tax Suspense Fund" and after deducting the necessary amount for the "Income Tax Administration Fund," are applicable toward the payment of the principal and interest of such certificates of indebtedness. Provision therefor is found in Section 47, Chapter 85, New Mexico Session Laws of 1933, providing as follows:

"The State Treasurer shall also create a fund to be designated as the 'Income Tax Administration Fund,' and to which fund he shall pay and carry ten per cent of all income taxes finally paid over for distribution and from which funds the costs of the administration of this Act shall be paid by the Tax Commission upon voucher as all other accounts are paid. Of the {275} remainder of such taxes, after the above funds have received the credits provided for, seventy-five per cent shall be, at the time of distribution thereof, credited to the State School Fund or to the State School Equalization Fund when and if created by Law and distributed from said fund as other funds accruing thereto are distributed by Law. **Twenty-five per cent thereof shall be credited to the 'Casual Deficit Fund' and be applied toward the retirement of Casual Certificate of Indebtedness of the year in which such income taxes are collected.** If there be no such certificates outstanding or a surplus remains of such twenty-five per cent after existing certificates have been paid and retired, then such monies as have accumulated in said fund shall revert to the State Common School Fund or to the State School Equalization Fund when and if created by Law."

Furthermore, in addition to the foregoing two sources, there is a third available source from which such certificates may be paid, namely, delinquent taxes represented by tax levy received by your office from the several county treasurers subsequent to July 1, 1938, after deducting therefrom such part thereof as may be required by law to be credited to the Tax Commission Fund, and likewise after deducting therefrom such part thereof as belongs to the interest and sinking funds. Provision therefor is found in Section 141-724, New Mexico Statutes Annotated, 1929 Compilation, providing as follows:

"The state treasurer shall, upon receipt of remittance of collected delinquent taxes from the several county treasurers, apply the same, except such part thereof as is required by law to be credited to the tax commission fund, and such part thereof as belongs to the interest and sinking funds to the reduction and payment of any deficits, accumulated

or other, in the appropriations account, and for this purpose the state treasurer is hereby authorized to carry forward into one account all deficits existing in any appropriations account for any and all years. **Whenever no deficit exists in such account, such taxes shall be credited to the retirement of any casual certificates of indebtedness issued for the purpose of paying any deficits in such account** and whenever neither deficits nor certificates of indebtedness exist, such taxes shall be credited to the general appropriations account except as otherwise provided by law."

I realize that the interpretation here given might result in the retirement of these certificates before the taxes levied by the State Tax Commission for such purpose are collected. If so, there would result monies in a sort of stagnant or dead fund. By properly informing the Legislature, these monies could by legislative act be used to reimburse the State Common School Fund or the State School Equalization Fund from whence the income tax money was originally taken to partially retire these certificates. As a matter of fact, it is suggested that interested parties take this matter up with the Legislative Reference Bureau and that a general law be recommended to the Legislature harmonizing Section 141-724 of the 1929 Compilation, Section 47 of Chapter 85 of the Laws of 1933 and the stock form section found in all appropriation bills corresponding to Section 13 of Chapter 232, New Mexico Session Laws of 1937.

{*276} Trusting the foregoing sufficiently answers your inquiries, I am,

By: FRED J. FEDERICI,

Asst. Atty. Gen.