

Opinion No. 41-3882

August 27, 1941

BY: EDWARD P. CHASE, Attorney General

TO: Mr. Rex French State Treasurer Santa Fe, New Mexico

{*94} In your letter dated August 25, 1941, you inquire whether bonds of the Gallup Municipal School District dated February 1, 1921, issued under the provisions of Chapter 105, Laws of 1919, must be called on the interest bearing date pursuant to Section 120, Chapter 701, 1929 Compilation, in the event that refunding bonds are issued.

Chapter 105, Laws of 1919, Section 3, provides that bonds issued thereunder are redeemable at the pleasure of the board of education at any time after ten years. Section 120-701 of the 1929 Compilation provides in part as follows:

"When sinking funds sufficient to retire one or more term bonds shall have been accrued, the county, municipal, independent or union board of education shall be (by) lot select the bond or bonds to be called for redemption at the next interest date and the county treasurer shall notify the holders of said bond or bonds by publication in a newspaper * * *."

I believe that this above quoted section would only pertain to calling of bonds where there are sufficient funds available with which to retire the same and would not necessarily apply where refunding bonds are contemplated.

Section 90-1101 of the 1929 Compilation provides as follows:

"That the governing body of any county, municipality, or school district in the state may with the approval of the state tax commission issue negotiable coupon bonds, to be denominated refunding bonds, for the purpose of refunding bonds, for the purpose of refunding any of the bonded indebtedness of such such county, municipality, or school district, now existing or hereafter created, which has or may hereafter become due and payable or which has or may hereafter become payable at the option of such county, municipality or school district, or by consent of the bondholders, or by any lawful means and for the payment or redemption of which there shall not be funds available in the treasury of such county, municipality, or school district."

It is to be noted that under this section a municipal school district may call optional bonds by consent of the bondholders and if the bondholders consent and are willing to surrender the bonds, it is my opinion that the same may be called at any time without waiting for the interest bearing date where refunding bonds are contemplated.

By C. C. McCULLOH,

Asst. Atty. General