

Opinion No. 44-4521

May 18, 1944

BY: EDWARD P. CHASE, Attorney General

TO: Mr. C. R. Sebastian, State Comptroller, Santa Fe, New Mexico

In your letter dated May 17, 1944 you state that the City of Portales levied property taxes to provide a sinking fund with which to retire certain water bonds and the fund amounts to approximately \$ 12,000.00. Through a mistake in computing the optional date it is found that the bonds cannot be called until 1948. The City now desires to use the surplus in this sinking fund to build or improve an airport and thus obviate the use of airport bonds. You desire to know whether the sinking fund may be used for airport purposes.

Article 9, Section 12 of the Constitution limits municipal indebtedness and the levy of taxes therefor and in part provides as follows:

"The proceeds of such taxes shall be applied only to the payment of such interest and principal."

Article 8, Section 4 of the State Constitution makes it a felony for any public official to use public moneys for any purpose not authorized by law.

Section 7-119 of the 1941 Compilation authorizes transfers of budget items, but prohibits the use of funds in any sinking fund, interest fund, road fund or building fund for any purpose other than the specific purpose for which such fund was created.

Section 7-120, Sub-Section 3 authorizes the use of an interest or sinking fund surplus for other purposes only after the retirement and payment in full of the bond indebtedness for which such interest and sinking fund was created.

In view of these constitutional provisions and statutes it is my opinion that the sinking fund may not legally be used for airport purposes or any other purpose other than that for which the fund was created. This does not mean that the moneys may not be temporarily invested in suitable securities.

By C. C. McCULLOH,

First Asst. Atty. General