

## Opinion No. 45-4734

June 7, 1945

**BY:** C. C. McCULLOH, Attorney General

**TO:** Mr. Floyd Santistevan Assistant Superintendent of Public Instruction Department of Education Santa Fe, New Mexico

{\*85} You have requested an opinion of this office on the following matter:

Municipal School District No. 2, located in the city of Las Vegas, has for some years past been renting a building for school purposes for the sum of \$ 1200.00 a year. It has on hand approximately \$ 10,000.00 in the building fund. The school district desires to purchase this building by paying down the \$ 10,000.00 and entering a contract by which it would agree to pay a sum certain until the purchase price had been paid out in full, at which time it would receive a deed to the premises.

You also state that at the present time a portion of the premises which the school district proposes to buy has been rented to another party under a five-year lease so that if the school district bought the building it would of necessity buy it subject to the lease. You ask our opinion as to whether or not the school district may legally enter this contract.

First, it is observed that Article 9, Section 11 of the Constitution of New Mexico relating to the indebtedness of school districts does not prohibit a school district from becoming indebted without a vote but merely prohibits it from borrowing money without such vote. Secondly, I do not believe that the Bateman Act, Section 7-607 of the 1941 Compilation, prohibits this type of transaction. All it does is make void any debt for any particular year for which there are not funds from that year's taxes to pay. It further prohibits the use of the funds belonging to any year for purposes other than paying expenses of that year. Under this contract, however, each year's payment would in fact be a debt due that year for which there would be ample revenues to assure payment.

See *Capital City Bank v. Board of County Commissioners*, 27 N.M. 541 where the court held that the issuance of tax anticipation certificates payable in succeeding years did not offend the Bateman Act. See also *Shipley v. Smith*, 45 N.M. 23, where the court sustained a similar contract although not referring to the Bateman Act.

There is no provision in our statute specifically authorizing the school district to purchase school buildings. However, by Section 55-902 of the 1941 Compilation, municipal school boards are given like power in jurisdiction over schools in districts within their jurisdiction as those possessed by county boards of education over their respective schools and districts.

Section 85-807 relating to rural schools gives the board very broad powers in that it is given supervision and control over all rural schools and districts and of sites, buildings,

equipment and funds of said districts. Further, Section 55-604, being the direct charge budget, includes items for the lease of school buildings and purchase of school grounds. This, in itself, is, in my opinion, a sufficient authorization to a school board to either lease a {\*86} school building or purchase school grounds.

That the language "purchase all school grounds" includes land with buildings attached is a necessary conclusion. Otherwise, the school district in a built-up area would never acquire additional school facilities since it could never buy vacant ground. This proposition is sustained by the case of *Ferree v. Sixth Ward School District*, 76 Pa. 376.

Only one other question occurs to me and that is as to the authority of a school district to stand in the position of a landlord. The authorities are divided as to whether or not the governing board of a school may lease school property for other purposes. A majority of the cases holding that the school cannot enter such leases appear to go on the fact that the use of the premises for the other purposes would or might interfere with the school functions. See, however, *Cast v. Schinault*, 113 Ark. 19, 166 S.W. 740, and *Lagow v. Hill*, 238 Ill. 428, 87 N. E. 369, which sustain the power of a school board to lease unneeded school property. Here, however, the situation is different in that the governing authorities will not be executing the lease but will rather buy subject to an existing lease, that is to say, the school will not be able to buy the entire rights of ownership, but only the rights subject to the lease.

Despite the fact that I can find no cases in point on this matter, I see no reason why a school district could not buy property subject to a lease as to a part, just as it might buy property subject to an easement.

In view of the foregoing, it is my opinion that municipal school district No. 2, San Miguel County, may legally purchase the premises. It is further my opinion that the fact that the premises are subject to a lease will not invalidate such purchase unless the use of the leased premises substantially interferes with the use of the balance of the property for school purposes.

Trusting the foregoing sufficiently answers your inquiry, I am

By ROBERT W. WARD,

Asst. Atty. General