

Opinion No. 46-4838

January 16, 1946

BY: C. C. McCULLOH, Attorney General

TO: Mr. R. H. Grissom Educational Budget Auditor Santa Fe, New Mexico

{*174} I have your letter dated January 14, 1946 in which you state that the Santa Fe Municipal Board of Education has requested you to transfer 1% of its Maintenance Budget to the Direct Charge Account for the purpose of contributing to a program of the Santa Fe Council and Chamber of Commerce, as well as other local city agencies, to bring an expert planner to Santa Fe for the purpose of planning building sites, etc. in the city, which would include school building sites for future building purposes.

You enclose a copy of the request from the School Board which shows that the School Board has agreed to share proportionately with other agencies in paying for bringing in an expert city planner.

It is my understanding that the School Board has an Emergency Fund set up as a part of the administrative budget, and that the transfer desired is to be put, first, into the General Maintenance Fund, and from that into the Emergency Building and Repair Fund.

Sec. 55-629 of the 1945 Supplement to the 1941 Compilation, relative to municipal school districts, provides as follows:

"Where any municipal school district has used all its direct charge funds and has levied the maximum tax levies allowed by law, the state educational budget auditor and the county budget commissioners shall have the power to borrow from the maintenance fund of such municipal school district not to exceed one per cent (1%) of the total maintenance budget of such municipal school district of any one year and set such sum up in a separate fund to be known as the Emergency Building and Repair Fund which shall be used only for emergency building and repair purposes. Provided, however, that said funds shall be used and spent only upon the joint consent and approval of the state budget auditor and the state board of education."

It is apparent that, before a transfer can be made to the Direct Charge Fund from the Maintenance Fund in the amount of 1% of the total maintenance budget for the purpose of emergency building and repair, the school district must have used all of its direct charge fund and have levied the maximum levies allowed by law. In the event that is done and the money is transferred, it is likewise apparent that the sum transferred to the Emergency Building and repair Fund can only be used for emergency building and repair purposes.

This office has previously written two opinions construing Sec. 55-629 (being Nos. 4474 and 4650) in which it has been held that the Emergency Building and Repair Fund cannot be used for the purchase of land upon which to build a school building nor for the purchase of school supplies.

In the case entitled: PEOPLE VS. CHICAGO A. & R. CO., 257 Ill. 208, 100 N. E. 503, it was held that taxes levied for building purposes could only be used to pay for the building of a school-house or to create a fund to meet bonds issued for that purpose.

In PEOPLE VS. CUMMINS, 169 N. E. 188, 337 Ill. 281, it was held that the procuring of furniture, fuel, libraries and apparatus for the school were not for building purposes, unless so declared by the statute.

It is apparent that the Emergency Building and Repair Fund is provided for in order to meet an actual emergency arising in the current fiscal {*175} year; and since the statute specifically provides that this fund may be used only for the purpose of building and repairs, I do not believe the fund can legally be used to participate in a long-range planning program, however worthwhile such a program may be as a civic enterprise.

No doubt, the school board could provide for a budget in the next fiscal year to pay for its share of the planning program, if school sites and recreational areas are a part of the entire survey.