

## Opinion No. 51-5430

September 26, 1951

**BY:** JOE L. MARTINEZ, Attorney General

**TO:** Mr. William J. Heck City Attorney Eunice, New Mexico

{\*136} This is in reply to your letter of September 25, 1951, requesting an opinion as to the authority of a school board to authorize the payment of or to pay in full an assessment against school property for paving to save payment of interest on such assessment.

§ 14-3704, N.M.S.A., 1941, specifically gives authority to a board of education to pay for improvements such as the paving of streets which would enhance the value of school property. This section reads as follows:

"Boards of regents, boards of trustees and other managing boards of educational and other public institutions of the state of New Mexico are specifically authorized at their discretion to make payment out of moneys available to them for that purpose for improvement or enhancement in value of the property involved (of) the installments of principal and interest due or to become due on any improvement project for which as municipal corporation in New Mexico has levied an assessment after due notice of intention to make such improvement and opportunity afforded to such institution to object and protest against the making of such improvement. Payments heretofore made by any such board are hereby validated and approved, provided such payments were justly due and for the benefit of such institution."

This section definitely contemplates the payment by the school boards or other managerial boards whenever the assessment has been levied. In my opinion, the language "the installments of principal and interest due or to become due" does not restrict these boards to paying such assessments in installments or require that they pay interest.

It is my opinion that boards of education, boards of regents and other managerial boards covered by this statute have full authority to make payment of the entire sum due under an assessment. Practical interpretation of the statute requires a finding that it contemplates such payment in full and does not require that the board forego the benefits of such payment to avoid payment of interest.

The making of this payment prior to the completion of the paving work would not be in violation of § 7-107, N.M.S.A., 1941 Compilation, which requires that the payment of public funds be on the standard voucher form provided by the State Board of Finance and that the vouchers show the supplies furnished or the services rendered for which the payment is being made. The levying of an assessment by the appropriate municipal authority is in itself the creation of an indebtedness which the school board is obliged to

pay. It is an obligation due and owing and it matters not that the goods or services for which payment is being made have not been rendered or delivered.

I trust that this fully answers your inquiry.