

Opinion No. 55-6117

February 28, 1955

BY: RICHARD H. ROBINSON, Attorney General

TO: O. J. Holder, Educational Budget Auditor, State of New Mexico, Santa Fe, New Mexico

In your letter dated February 21, 1955, you enclosed a letter from the Superintendent of Schools at Las Vegas, regarding the legality of payment by the school district to the city for a sewer installation and also the legality and the method of payment of a special assessment for street improvements abutting the school property.

Relative to the assessment for sewer installation, this seems to be an item which may be paid by the school board to the city out of the Direct Charge budget in connection with improvement of school grounds and buildings under § 73-7-6 of the 1953 Compilation.

Relative to the assessment for street improvements, school districts are not included in the provision authorizing municipalities to levy a one-mill tax to pay for improvements abutting upon property of municipalities, counties, the United States of America or the State of New Mexico, pursuant to § 14-41-6. However, § 14-41-5 specifically authorizes school boards to make levies to pay special assessments and installments thereof levied by a municipality against school district property. Before the 1953 amendment of this section, under Opinion No. 5430, a copy of which I am enclosing herewith, this office ruled that boards of education could pay the total assessment against school property levied by a municipality for improvements.

If the school refuses to pay the assessment, you are wondering what authority the city would have to collect the assessment. The usual method of foreclosing special assessment liens and selling the property at foreclosure sale would not be applicable where school district property is involved. Under Article 8, Section 7 of the Constitution appears this language:

"No execution shall issue upon any judgment rendered against the board of county commissioners of any county, or against any incorporated city, town or village, school district or board of education; or against any officer of any county, incorporated city, town or village, school district or board of education, upon any judgment recovered against him in his official capacity and for which the county, incorporated city, town or village, school district or board of education, is liable, but the same shall be paid out of the proceeds of a tax levy as other liabilities of counties, incorporated cities, towns or villages, school districts or boards of education, and when so collected shall be paid by the county treasurer to the judgment creditor. (As amended November 3, 1914.)"

The authority of school boards to assume and pay their pro rata share of the cost of special improvements calculated on a front footage basis from the Direct Charge budget is recognized by the Supreme Court in the case entitled Oliver et al vs. Board of Trustees of the Town of Alamogordo, 35 NM 477, in the language appearing at the bottom of p. 484.

In view of the legality of paying such special assessments and the fact that school boards are specifically authorized and directed to make levies to pay the same, if the school board should refuse to make payments or be unable to do so out of the Direct Charge budget, the city could obtain a judgment against the school district and tax levies would thereupon be necessary in order to pay such judgment.

By C. C. McCulloh

Assistant Attorney General