

Opinion No. 55-6178

June 2, 1955

BY: RICHARD H. ROBINSON, Attorney General

TO: Mrs. Georgia L. Lusk, Superintendent of Public Instruction, Santa Fe, New Mexico

This office has received an inquiry regarding the validity of a recent bond issue of the Roswell Municipal Schools. Since the question is of a state-wide importance we are directing our reply to you.

Recently the Roswell Municipal Schools authorized the sale of \$ 185,000.00 school bonds. The notice of sale prescribed the maturities to be \$ 40,000 on June 1, in the years 1956 to 1959, both inclusive, and \$ 25,000 on June 1, 1960. The attorney for the purchaser of these bonds is now questioning their validity upon the ground that the maturity schedule violates § 73-8-20 of the 1953 Compilation, which requires school bonds to "be payable in consecutive order in substantially equal annual installments."

Two questions present themselves. First, whether the maturity schedule is in compliance with the statute, and second, whether any action could be brought to invalidate bonds issued in violation of this section.

If the \$ 25,000 installment had been for any year except the final year of maturity, a stronger argument could be made for stating that the statute had not been followed. However, it appears to us that some leeway must be granted as to the last year of maturity. Whether the discrepancy in this case is so clear as to violate the statute, we hesitate to state. This is a matter which, it seems to us, should be decided by the Courts if an action can be brought to test the validity of these bonds at this time.

In **White vs. Board of Education of Silver City**, 42 N.M. 94, 75 Pac. 2d 712, the Court stated:

"As the interest maturing each year be added to the principal, the annual payments more nearly approximate equal installments, fluctuating between \$ 7,397.50 and \$ 6,422.50."

Although the case was decided on a different point, as will be discussed later in this opinion, we take it that the Court felt that the differentiation between the figures above quoted was not too large. Multiplying those figures by five to approximate the situation at Roswell today, we reach figures of \$ 39,987.50 and \$ 32,111.50. The \$ 25,000 figure is, of course, still considerably under the projected figure of \$ 32,000, and thus we would hesitate to state that even by inference was such a figure approved in the White case. However, on the other hand, when one considers the added factor of the smaller figure being for the last installment, we do not feel that it is so far from that inferentially approved in the White case, to render it per se illegal.

With respect to the second question, the attorneys for the purchasers of the Roswell Bonds state that "It is manifestly unrealistic to require a suit to be filed questioning the validity of maturities which have not yet been established." We agree with this observation. However, the White case is direct authority for the proposition that no suit may be filed questioning maturities of bonds after the passage of the time prescribed in § 73-8-32, 1953 Compilation, even though the School Board has not as yet established the maturities.

A search of the record in the White case shows that there the election was held on May 25, 1937, canvassed May 28, 1937, and Certificate of Canvass issued June 18, 1937. The Resolution setting the maturity schedule for the bonds was passed on October 1, 1937. It was unequivocally stated in the White case that the statute of limitation, now compiled as § 78-8-32, was applicable. The Court stated:

"We think the question is now foreclosed, along with the one first discussed, through failure to institute an action challenging the proceedings on this ground within the time limited by Section 120-712."

Where the Supreme Court has spoken, we do not feel we are in a position to question the wisdom of its action. The White case decided the identical point. It is our opinion that no suit can be filed questioning the maturity schedule adopted by the Roswell Board.

By: Walter R. Kegel

Assistant Attorney General