

Opinion No. 81-01

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OPINION OF: Jeff Bingaman, Attorney General

BY: Jill Z. Cooper, Deputy Attorney General

TO: Kathleen R. Marr, Secretary, Department of Finance and Administration, 421 State Capitol, Santa Fe, New Mexico 87503

PUBLIC SCHOOLS

Revenues generated by school district general obligation bonds pursuant to the Public School Capital Improvements Act may not be spent to construct teacher housing.

QUESTIONS

May a school district use general obligation bond proceeds or Public School Capital Improvements Act revenue for the construction of teacher housing?

CONCLUSIONS

No.

ANALYSIS

The permissible uses of school district general obligation bond proceeds are defined at Section 22-18-1 NMSA 1978 which provides that

". . . a school district may issue general obligation bonds for the purpose of erecting, remodeling, making additions to and furnishing school buildings, or purchasing or improving school grounds or any combination of these purposes . . ."

OPINION

The language of Section 22-18-1 is apparently derived from Article IX, Section 11 of the New Mexico Constitution which provides that

"No school district shall borrow money except for the purpose of erecting, remodeling, making additions to and furnishing school buildings or purchasing or improving school grounds or any combination of these purposes. . . ."

The authorizing language of Section 22-18-1 must therefore be read as a limitation on the use of proceeds from general obligation bonds because any other use is prohibited by the constitution. **Board of Education of City of Aztec v. Hartley**, 74 N.M. 469, 394

P.2d 985 (1964). In the **Aztec** case, the Supreme Court held that a school district election called to issue bonds for "school purposes" was invalid on the grounds that the phrase "school purposes" was "too all-inclusive and includes purposes prohibited by the constitution." 74 N.M. at 473.

Thus, bond proceeds may be used to construct teacher housing only if such use is included among the purposes defined by Section 22-18-1. In particular, it would be necessary to find that teacher housing is included within the meaning of the term "school building." If the construction of teacher housing is not permitted in that context, it certainly would not be permitted in the context of an improvement to school grounds.

Where the term "school building" has been defined by the courts {**203*} in the context of the expenditure of revenues from a bond issue, it has been generally determined that a school building is a structure which is used for teaching. For example, in **Petition of School Board of School Dist. No. U2-20 Jt., Multnomah County**, 232 Or. 593, 377 P.2d 4, 5 (1962), the Court stated that "[a] building is a 'school building' if it is designed to carry out a part of the instructional program authorized by the district." The Court held that a swimming pool would be a school building because a course of instruction was given in swimming.

Similarly, in **Jones v. Sharyland Independent School District**, 239 S.W.2d 216 (Tex. Civ.App. 1951), the Court held that a gymnasium was a school building within the meaning of school bonding provisions because state law required that physical education be taught in the schools and it was apparent that a gymnasium was necessary to properly teach it. See also, **Alexander v. Phillips**, 31 Ariz. 503, 254 P. 1056 (1927). However, in **Board of Education of Louisville v. Williams**, 256 S.W. 29 (Ky. Ct.App. 1953), the Court determined that bonding statutes must be strictly construed and a stadium could not be considered a "school building".

Accordingly, insofar as buildings used for teacher housing are not used for instructional purposes, such buildings do not fall within the meaning of the term "school building" as it is commonly used in bonding provisions.

Funds made available to school districts under the Public School Capital Improvements Act may be used for "capital improvements" which are defined at Section 22-25-2(B) NMSA 1978 as

". . . expenditures, exclusive of any debt service expenses, for:

- (1) erecting, remodeling, making additions to, providing equipment for or furnishing public school buildings;
- (2) purchasing or improving public school grounds; and
- (3) maintenance of public school buildings or public school grounds, exclusive of salary expenses of school district employees."

These revenues are derived from direct taxes levied in the school district and distributions from the public school capital improvement fund. They do not involve the borrowing power of the school district and would not, therefore, be subject to the prohibitions of Article IX, Section 11. Nevertheless, as a rule, school districts have no inherent power of taxation and may only exercise such power as is authorized by law. See, e.g., 68 Am. Jur. 2d Schools §§ 79, 80.

Where school districts expend funds for the construction of teacherages, the relevant case law indicates that they do so pursuant to specific statutory authority. See, e.g., **Landrum v. Centennial Rural High School Dist.**, 146 S.W.2d 799 (Tex. Civ.App. 1940); **McNair v. School Dist. No. 1 of Cascade County**, 87 Mont. 423, 288 P. 188 (1930). If not specifically mentioned, teacherages are not included within an authorization to construct school buildings or school houses. **Denny v. Mecklenburg County**, 211 N.C. 558, 191 S.E. 26 (1937). In the **Denny** case, the Court explained that school districts have only such authority as is defined by law, and the authority to construct teacherages is neither expressly nor implicitly granted by a statute authorizing the district to erect and {204} equip school houses. See also, **Hansen v. Lee**, 119 Wash. 691, 206 P. 927 (1922). Section 22-25-2(B) does not specifically authorize the construction of teacher housing.

In summary, revenues generated by school district general obligation bonds or pursuant to the Public School Capital Improvements Act may not be spent to construct teacher housing.

ATTORNEY GENERAL

Jeff Bingaman, Attorney General

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