

Opinion No. 14-1241

June 5, 1914

BY: IRA L. GRIMSHAW, Assistant Attorney General

TO: Honorable Milton J. Helmick, Assistant District Attorney, Socorro, New Mexico.

BONDS.

Method of procedure in regard to issue of bonds for county highway purposes.

OPINION

{*103} We have been unavoidably delayed in answering your request for information concerning the possibility. method of procedure and the amount of a contemplated bond issue for county high school purposes.

The memorandum you left with us does not inform us whether {*104} the figures, \$ 680,055.00, were intended to mean the assessed value of taxable property within the school district or within the county, but we know that the assessed value of taxable property within either Socorro or Sierra Counties is greater than that sum, and therefore we assume the figures have reference to the district. The memorandum seems to indicate that there is an outstanding bond issue of the district in the amount of \$ 15,000.00. At least we will assume this to be so; also the \$ 15,000.00 item may intend to mean the amount of the contemplated bond issue. However, it is not of so much importance which way we construe it.

We understand that an election has been held designating a county high school and you desire information concerning the proper manner in which to issue bonds to pay for the costs of school site and location of the buildings and the cost thereof, if the same can be legally done.

Section 9 of Chapter 57 of the Laws of 1912 empowers the board of education or the school directors of the district to bond the district "as now provided by law" and makes it their duty to proceed with dispatch to secure the necessary site and buildings. Section 8 of the same chapter provides that the cost of the site and buildings shall be borne by the district where the school is established.

Section 11 of Article IX of the State Constitution limits the debt contracting power of school districts to an amount not in excess of six per cent of the assessed valuation of taxable property within the district. This, no doubt, refers to indebtedness other than current obligations.

Six per cent of the assessed valuations of taxable property within the district, if we understand your figures, would equal \$ 40,803.30. If the \$ 15,000.00 item was intended

to mean an outstanding bond obligation in that sum, the district would still have a balance of \$ 25,803.30 to work upon. So it seems that bonds might be issued in an amount equal to \$ 25,803.30 at this time by the district.

In our perusal of the statutes of this state bearing upon the question of the issuance of school district bonds, we find that the method and manner of issuing and negotiating these securities depend on whether the issue is from a school district or from a board of education.

If the issue is to be made by a school district which does not comprise an incorporated city and is therefore not managed by a board of education, Section 1541 of the Compiled Laws of 1897 governs. The question as to whether bonds shall be issued or not is submitted by the school directors to the qualified electors of the district. They do this by posting notices within the district which must show the amount proposed to be raised and ought to show the date of the election, the purpose, and all other matters which might be material thereto. As we take it the notice is practically the call for the election. The election is held in accordance with the notice and if a majority of the votes cast are in favor of the bond issue, the directors are then authorized to issue the bonds. The bonds are to be in denominations of not less than \$ 25.00 nor more than \$ 500.00 and payable in not less than twenty years nor more than thirty years, but payable at the pleasure of the district any time after ten *{*105}* years from date of issue. The bonds are issued in the name of the district and are signed by the president of the board of directors and approved by the county superintendent. After they are issued they are delivered to the county treasurer, whose receipt therefor is taken and he advertises the same for sale.

See Section 1542, Compiled Laws of 1897.

Section 1584, in effect, first provides that where the school directors, trustees or common council, shall not have the necessary means with which to complete school buildings or pay for the purchase of school grounds and buildings, or to pay a debt contracted therefor, they may, on filing a report under oath with the board of education of such city or town, require the board of education to order an election for the issuing of bonds of the school district of the city or town to an amount sufficient to liquidate the proposed indebtedness.

The second portion of the section compels boards of education to issue bonds to raise funds for the purchase of school sites and to erect suitable buildings or to fund bonded indebtedness for school purposes of such city or town. The question of the issue of bonds shall be submitted to the people; the election thereof is called by the mayor of the city or town on request of the board of education. and it is conducted in all respects as are the elections for city and town officers in those cities and towns, except the returns are made to the board of education.

See Section 1585, Compiled Laws of 1897.

We are of the opinion that the procedure in the issuance of the bonds and the calling of the election, etc., should be in conformity with Sections 1584, et seq., if the school district is entirely within an incorporated city or town and governed by a board of education rather than the school directors. If the school district is governed by the school directors and does not constitute a district within an incorporated city or town, the procedure should be in accordance with Sections 1541 and 1542, et seq.

We have had to investigate this question, more or less, at random because we are not thoroughly familiar with the exact conditions confronting you and therefore we would be very glad to render any further advice upon your request.