

Opinion No. 20-2471

January 23, 1920

BY: HARRY S. BOWMAN, Assistant Attorney General

TO: Mr. J. H. Wagner, Superintendent Public Instruction, Santa Fe, New Mexico.

Re School Matters.

OPINION

We have before us letter of Mr. Earl Douglass, County Superintendent of San Juan county, directed to you under date of January 5, propounding several questions upon which he requests you to obtain for him the opinion of this office.

The first inquiry involves the question of the right of the County Board of Education to let contracts for the construction of school buildings to separate contractors upon bids received from each. We know of no prohibition against such procedure. The County Board of Education is authorized to construct school buildings in such manner as it may deem best for the school district, and if the board determines that the building can be erected more economically by contracting with one person for a certain part of the work and with another person or persons for other parts, we know of no reason why it should not do so.

The answer to the first inquiry disposes of the matters contained in the second.

We know of no reason why a school district which has voted six thousand dollars worth of bonds for the erection of a school building should not be permitted to vote for an additional three thousand dollar issue in order to complete the building if it should be found that the sum obtained from the sale of the first issue is not sufficient for the purpose.

The next inquiry involves the validity of the contract for the erection of a school building where the contractor failed to execute a contractor's bond for the faithful performance of the contract if he is permitted to proceed with the work without objection on the part of the County Board of Education. In our opinion, the Board has waived its right to demand the bond by permitting the contractor to proceed with the building without demanding of him the fulfillment of that part of the contract requiring the giving of the bond.

Your fourth inquiry involves the question of the issuance of bonds by a consolidated school district wherein one of the smaller districts included in the consolidated district had already outstanding a bond issue, and the issue of the consolidated district brought the bonded indebtedness of that part thereof which included said smaller district to a sum in excess of six per cent of its assessed valuation.

We are of the opinion that such a procedure would be in violation of section 4903, Code 1915, which limits the bonded indebtedness of any school district to six per cent of the assessed valuation of its taxable property.

Your last inquiry involves the authority of a consolidated district to levy a tax for interest on bonds, new equipment, etc., which will make the levy in excess of five per cent upon one part of the newly consolidated district by reason of previous levies for similar purposes. We are of the opinion that the levy must be confined within the limitation of five per cent including the original levy made by the district which is contained within the consolidated district.