

Opinion No. 22-3248

January 26, 1922

BY: HARRY S. BOWMAN, Attorney General

TO: Hon. A. G. Whittier, Traveling Auditor, Santa Fe, New Mexico.

Payment Interest on School Bonds Out of Tax Collections.

OPINION

{*114} Referring to the matter of the payment of interest on school bonds out of funds raised by taxes for general purposes, as indicated in the letter from Mr. Simon Serrano, Treasurer of Guadalupe County, under date of December 10th, to you, and the letter from Mr. John Joerns, State Educational Auditor, under date of December 30th, also to you, and your letter to this office of January 6th, I wish to advise:

An examination of the laws authorizing the issuance of bonds reveals that in most cases specific tax levies are provided for the raising of funds to pay interest upon such bonds. In some isolated instances the laws require that interest shall be paid out of any funds on hand at the time that such interest may become due in the event that there are not sufficient moneys in such funds with which to meet interest payments.

In order to advise you intelligently, therefore, upon the question submitted, it would be necessary that information be furnished showing the law under which the school bonds in question were issued and sold.

I desire to call your attention, however, to Section 8, Chapter 105, Laws of 1917, (The County Unit School Law) wherein county {*115} boards of education and boards of education of municipal districts have power to provide for the payment of interest on school bonds and the redemption thereof. It is possible that this Act might be construed to authorize boards of education to use any unexpended funds to pay interest upon bonds in those instances where a levy sufficient to pay such interest had not been made by the district. This power may possibly be implied from the broad authority vested in county boards of education.

It could not be successfully urged, however, that there is any duty imposed upon such boards to use such funds for that purpose to the detriment of other purposes for which such funds had been specifically collected under proper tax levies.

I am returning to you herewith the letters from Mr. Serrano and Mr. Joerns, submitted with your inquiry.