

## Opinion No. 22-3512

July 10, 1922

**BY:** HARRY S. BOWMAN, Attorney General

**TO:** State Tax Commission, Santa Fe, New Mexico.

### **Payment Bonds as Funds Are Accumulated. Use of Sinking Funds for Other County Expenditures.**

#### **OPINION**

{\*166} In reply to your oral request for an opinion regarding the construction of Section 1169, Code of 1915, regarding the requirement of the section as to the payment of bonds as sufficient funds are accumulated in a sinking fund for that purpose, and which inquiry was accompanied by a letter from Mr. J. A. McNabb, Jr., Assistant Land and Tax Agent for the El Paso & Southwestern System, I beg to advise:

Among other things Section 1169, Code of 1915, provides that

"When there are sufficient funds in his hands to the credit of the redemption fund to pay in full the principal and interest of any such bonds issued under this Article by any such county, to immediately call in and pay as many of such bonds, with accrued interest thereon, as such funds in hand will liquidate, as hereinbefore provided. Such bonds shall be paid in the order of their number, and when it is desired to redeem any of such bonds the County Treasurer shall cause to be published for thirty days in some newspaper at or nearest the county seat, a notice stating that certain county bonds by numbers and amounts will be paid on presentation."

In my opinion Mr. McNabb is correct in his contention that the bonds must be paid serially as the monies in the sinking fund are available for such purpose. The provisions of the section quoted are mandatory, in my opinion, and county treasurers must proceed in accordance with the provisions of the section and retire the bonds as there are sufficient funds accumulated in the sinking fund to pay them.

The section mentioned, however, applies only to bonds issued for court houses, jails and bridges. This section is a part of Chapter 83, Laws of 1891, and the chapter in question applied to and governed only bonds issued for the purposes last above named.

I find nothing in the statutes which makes a similar provision for the retirement of school bonds or municipal bonds.

I would suggest, therefore, that the attention of all county treasurers in the State be called to the provisions of the section quoted, and that they be urged to comply therewith in order to reduce interest payments upon such bonds as rapidly as possible.

Mr. McNabb also speaks in his letter of the practice of various Boards of County Commissioners in borrowing moneys from sinking funds and using them for other county purposes.

This is a pernicious practice, absolutely without authority of law and in fact contrary to every rule of economic administration of public affairs. This office has uniformly held, and advised county officials, that the use of sinking fund monies for other purposes is prohibited by law and that officials sanctioning such practice should be prosecuted to the full limit of the law.

I desire to reiterate the attitude of the office in this respect and to urge that county officials who disobey the mandates of our laws {*\*167*} in this regard be prosecuted and compelled to make restitution in every case where convictions can be obtained.

I am returning to you herewith Mr. McNabb's letter above mentioned.