

Opinion No. 22-3445

May 23, 1922

BY: HARRY S. BOWMAN, Attorney General

TO: Dr. R. E. McBride, Las Cruces, New Mexico.

Proposition of Issuing School Bonds to Be Submitted to Educational Auditor.

OPINION

{*155} Referring to our conversation over the telephone this morning regarding the necessity to submit to the State Educational Auditor the proposition to issue bonds for a school district, I wish to advise you as follows:

The provisions of Chapter 190, Laws 1921, the act creating the office of state educational auditor, impose upon that officer an almost unlimited power and jurisdiction in connection with the financial management and control of all educational institutions in the state.

Section 1 of the Act, which sets out the purpose of the creation of the office, states that the office of state educational auditor is created "for the purpose of efficiently and scientifically controlling and supervising the levying of taxes and the expenditure of public funds for state educational institutions and county and municipal schools and school boards.

In Section 2 of the Act are defined the powers, duties and jurisdiction of that officer in the following language:

"The State Educational Auditor shall supervise and control the rate of levies for the amount of expenditures of all State educational institutions and county and municipal schools and school boards, for all purposes, and, to that end all budgets and estimates of said institutions, schools and boards, under such regulations as the said Educational Auditor shall prescribe, shall be submitted to said Educational Auditor and revised and approved by him before the same shall become effective, and before any levy therefor or expenditure of public funds thereunder shall be made."

Section 3, among other things, provides that:

"No levy shall be made by or certified to boards of county commissioners for said institutions, schools, or boards until after the revised and approved estimates of the auditor shall have been certified to said commissioners and all levies for said purposes shall be made in conformity to the estimates of the said auditor."

In order to enforce the very broad and drastic provisions of the {^{*}156} preceding two sections it is then prescribed in Section 4 that:

"All levies or expenditures for said purposes, made contrary to the provisions thereof shall be null and void and the office or person responsible therefor, with the sureties on his bond, shall be liable to the state for loss incurred by the state on account thereof."

It will be noted that the entire supervision and control of tax levies for school purposes are subject to the power of the educational auditor to change, amend, or revise, and such power must necessarily carry with it the right to supervise and control the creation of an indebtedness, the tax levy to pay which is to be subject also to his revision.

In my opinion the provisions of Chapter 190 are so worded as to require the submission of a proposition to issue school bonds by a school district to the approval of the state educational auditor.