

Opinion No. [29-86]

April 17, 1929

BY: J. A. MILLER, Assistant Attorney General

TO: Mr. James N. Bujac, Carlsbad, New Mexico.

SCHOOLS -- Bonds to be sold before July 1st. § 120-175, Code 1929. § 16-103, Code 1929.

OPINION

Supplementing a telegram from this office under date April 1, 1929, and which was in answer to a request from you that we wire answer to certain questions relative to the advertising and sale of school bonds, your attention is directed to the last words of our telegram in which it was suggested that the date of sale be chosen in either May or December.

In wording that telegram attention was given primarily to the requirements of Senate Bill No. 112, approved March 15, 1929. From further and more mature consideration of the bill we are of the opinion that it does not repeal by implication the inhibition contained in section 715 of the School Code, providing that bonds shall not be issued or sold after July 1 in any calendar year.

It is our opinion that the requirement of Senate Bill No. 112 above referred to concerning the fixing of the date of sale of bonds in relation to the date of the collection of the taxes for the payment of the first installment of interest, is directory only and not mandatory and can well be interpreted and followed consistently with the limitation expressed in section 715, chapter 148, Laws of 1923. If you have not already fixed upon a date and desire to make sale of bonds, it would seem that sale may be made at any time before July 1. If not made before July 1 of this year it is doubtful whether such sale will be permissible at any time later in the year. Hence, kindly disregard the month of December as suggested in the telegram.

Your attention is directed also to Fisherick et al v. San Juan County Board of Education, 30 N.M. 454, in which it was held as follows:

"1. Under chapter 7 of the School Code, chapter 148, Laws 1923, a proposal to issue and sell in April, 1924, school bonds voted in May, 1923, will not be enjoined for the sole reason of failure to issue and sell them on or before July 1, 1923.

"2. Such construction of statute is to be favored as will not tend to defeat its useful purpose."

Although the court in the above cited case refused to enjoin the sale of bonds voted in May, 1923, and offered for sale in April, 1924, it would seem to be much better practice and less likely to interfere with the sale of bonds, to arrange for their sale prior to July 1 of the year in which voted.