

Opinion No. 31-81

March 5, 1931

BY: Frank H. Patton, Assistant Attorney General

TO: Mrs. G. D. Reed, Acting Education Budget Auditor, Santa Fe, New Mexico.

{*49} This letter is in reply to the following questions submitted by you under date of March 3, 1931.

1. Can a school district borrow money for the purpose of paying interest on bonds of the district validly issued when the Board of County Commissioners has failed to levy a tax for that purpose as provided in Section 120-718 of the 1929 code?
2. Can another school district loan money to said district for such purpose out of available moneys in its sinking fund?

In answering the first question reference may be had to the following:

"A school district has no power to borrow money for school purposes unless expressly authorized to do so by statute, or **unless such power is necessarily implied from some other power granted or duty imposed.**" 30 Cyc. 976.

In *Clarke vs. School District No. 7*, 3 R. I. 199 it was held that a school district may bind itself by a negotiable promissory note or bill of exchange for any debt contracted in the course of its legitimate business, for any expenses incurred in any matter or thing which it is authorized to do, and the provisions of the school act, giving the school district power to raise money by taxation, cannot be construed to forbid borrowing of money for a legitimate purpose. The Court also said:

"It is not of absolute necessity that a corporation should give its promissory note for such debt even to the original creditor; but it is easy to see that by doing so it postpones payment and obtains an extended credit. The law, however, permits it as a matter convenient to the corporation as it is to every other person because the corporation is not thereby carrying on a business foreign to the purpose of its creation. These objects are pursued notwithstanding and none others. It does not alter the amount of indebtedness nor is the ultimate purpose different."

To the same effect is *Sheffield School Township vs. Andress* 56 Ind. 157.

In view of these authorities, were it not for Section 33-4241 of the 1929 Code, I would be inclined to the opinion that school boards could borrow money for the purpose mentioned in question 1. However, the language employed in this Section is very broad and sweeping. This Section states that it shall be unlawful for a board of school directors "for any purpose whatsoever to become indebted or contract any debts of any

kind or nature whatsoever during any current year, at the end of such current year, is not and cannot then be paid out of the money actually collected and belonging to that current year."

The question arising in my mind is whether or not by borrowing money to pay interest coupons on bonds legally issued the school board **becomes indebted or contracts a debt**, within the meaning of this Section. It is true that by so doing they merely change the form of an existing debt and transfer the obligation to another party, but they also obligate themselves to pay interest on the amount of the interest coupons, which interest they might otherwise not be required to pay. Therefore, it is my opinion, that, under a strict and literal interpretation of Section 33-4241, the board of school directors in such a case as stated in your question, could not legally borrow money.

It seems to me that the party most vitally interested in a case of this kind is the one who proposes to loan the money, and if the school board should not have power to borrow the money such a party might have difficulty in collecting his loan. No doubt he would consult his own attorney and be fully advised before making such a loan.

{*50} Your second question, in my opinion, should be answered NO. Money deposited as a sinking fund for the payment of bonds is not available for use for any other purpose. Opn. Atty. Gen. No. 2618 (1920).

By Quincy D. Adams,

Asst. Att'y General