

**Opinion No. 37-1724**

July 27, 1937

**BY:** FRANK H. PATTON, Attorney General,

**TO:** Mr. Benjamin D. Luchini Chief Tax Commissioner Santa Fe, New Mexico

{\*143} This is to supplement our opinion No. 1715, dated July 16, 1937, relative to the authority of School District No. 16, Lea County, to issue certificates of indebtedness in anticipation of collections from a two mill levy made pursuant to Chapter 44, Laws of 1931. In that opinion I held that such procedure would be in violation of Article 9, Section 11 of the Constitution.

Since writing this opinion, my attention has been called to Section 120-810, New Mexico Statutes Annotated, 1929 Compilation, authorizing the issuance of certificates of indebtedness in anticipation of tax collections. This particular section was held to be constitutional by this office in opinion No. 776 in which the writer said:

"In my opinion this amendment to the constitution does not affect the right of the school district to anticipate the collection of taxes by the issuance of certificates of indebtedness since the issuance of such certificates does not constitute 'borrowing' within the meaning of said constitutional amendment. 56 C. J. 541."

It was likewise treated as constitutional in opinion No. 945. Consequently I do not feel at liberty to disturb the administrative interpretation given the act by this office. Opinion No. 1715 is hereby withdrawn and it is the opinion of this office that Section 120-810 is constitutional and that the certificates inquired about may be lawfully issued by School District No. 16, Lea County.

By RICHARD E. MANSON,

Asst. Atty. Gen.