

Opinion No. 37-1842

December 17, 1937

BY: FRANK H. PATTON, Attorney General

TO: Mr. R. H. Grissom Educational Budget Auditor Santa Fe, New Mexico

{*203} Your letter of December 15th again calls attention to the request of the school authorities of the Hobbs Municipal School District for permission to issue certificates of indebtedness for the purpose of construction and repair of school buildings.

I note that the total amount of the certificates will be some \$ 47,000.00, which is to be supplemented by P.W.A. grant of \$ 27,000.00

Your letter for the first time sets forth in detail all the facts in connection with this matter. However, some few days ago I discussed this matter with Mr. Donnelly of Hobbs and at that time intimated to him that I had grave doubts as to the legality of this procedure.

However, at this time I desire to make the following comments and first direct your attention to the requirements of Chapter 44 of the Session Laws of 1931, to the effect that the proceeds from the tax levy provided by said Chapter is to be expended under the direction of the State Tax Commission.

I am unable to see how this requirement can be followed in view of the demands made by the P.W.A. I do not believe the State Tax Commission has any authority to delegate a matter of this kind to any other body and therefore, of course, could not institute the P.W.A. as its agent.

Section 120-810 of the 1929 Compilation is the provision of law authorizing the issuance of certificates of indebtedness and is divided into two parts. The first part refers to the issuance of certificates of indebtedness for school maintenance {*204} expenses and in this provision we are not interested.

The second portion of the statute has application to the issuance of certificates of indebtedness for the construction of and repair to school buildings and provides, in brief, that the particular board of education may borrow on such certificates "for the purpose of meeting immediate payments on contracts for such repairs and improvements." It is my belief that the legislature, by the enactment of this section of law, merely intended to provide a form of relief in emergency cases only and I do not believe that the proposition which you have submitted falls within the scope and contemplation of this statute.

In the interests of the schools throughout the state this office has consistently refrained from attacking in any way the constitutionality of this law and we trust that it will not be necessary to raise this question at the present time.

In view of the foregoing, this office does not feel that it can assume the responsibility of rendering an approving opinion upon the proposed plan to issue such certificates and I can only suggest that a remedy by way of a mandamus proceeding exists to compel the approval of the Educational Budget Auditor. Of course, consideration must be given to the question of discretion and it will have to be determined by the attorney for the school authorities if, in fact, a mandamus proceeding lies.

In fairness to all concerned, I may state further that should this matter go into the courts this office would feel that it has a duty imposed upon it to raise the question of the constitutionality of Section 120-810, and I would regret very much to see the courts rule adversely upon this section as I realize many times the schools, of necessity, must raise temporary funds.