

Opinion No. 41-3893

September 9, 1941

BY: EDWARD P. CHASE, Attorney General

TO: Mr. H. Vearle Payne Assistant Special Tax Attorney State Tax Commission Santa Fe, New Mexico

{*95} In your letter dated September 9, 1941, you request an opinion from this office on the following questions with particular regard to the provisions of Chapter 123, Section 4, Laws of 1941, as they apply to the consolidated school district in Socorro County composed of Magdalena District No. 12 together with five other districts. Apparently the bonds of the consolidated district cannot be sold until after July 1, 1941.

1. Can the State Tax Commission, prior to January 1, 1942, legally levy a tax on the entire consolidated school district, as such, to pay the first year's interest on the bonds of the consolidated district? To this question my answer is that a levy upon the property of the consolidated district in its entirety should not be made.
2. Can the State Tax Commission, prior to January 1, 1942, legally levy a tax on School Districts 11, 31, 48, 49, 50 and 12, separately and individually, to pay the interest on bonds voted and issued by consolidated school District No. 12? This question has already been answered in the affirmative in an opinion written by Mr. Chase, Attorney General, to the State Tax Commission, dated August 14, 1941, and it is still the opinion of this office that such a levy to pay interest on said bonds can legally be made upon each of the old school districts comprising the consolidated district.
3. Can the State Tax Commission, prior to January 1, 1942, legally levy a tax on old School District No. 12, in the light of the fact that, if the district was considered separately, it had bonds outstanding in excess of the 6% of its valuation, even prior to the issuance of the bonds of the consolidated district? This question is also answered by the foregoing opinion. The fact that outstanding bonds in old School District No. 12 may exceed 6% of its valuation at the present time is no indication that the original issue was in excess of the valuation at the time of such original issue.
4. You inquire whether if levies are made in the individual school districts, the Tax Commission is legally authorized and protected in making a certificate that adequate levies had previously been made to meet interest payments on such bonds. My answer to this question is that if the acts {*96} required by the statute are actually done, there is no reason why the Tax Commission could not issue such certificate to that effect.
5. Is it your opinion that the provisions of Section 120-617, New Mexico Statutes Annotated, 1929 Compilation, prevents the transfer of taxes collected for interest on the bonds from the old school districts to the new consolidated district? Section 120-617 of the 1929 Compilation provides as follows:

"The district tax proceeds for direct charges shall be credited to each district from which collected, in a separate fund, and be disbursed upon the warrant or voucher of the governing authority of such district."

After the consolidation is complete, I do not see that any transfer of the district funds is necessary since the county board would lose jurisdiction over the districts included in the consolidated district and the governing board of such consolidated district could disburse funds credited to the individual districts.

6. If it is your opinion that the tax can be levied in any manner, please state how the budgets should be prepared to put into effect the tax levy and the disbursal of the funds to be collected. This question is sufficiently answered in the answers to Paragraphs 2 and 5 above mentioned.

In questions 7 and 8, you are merely repeating in more general language the prior questions already answered, and for that reason no separate answer is deemed necessary to these two questions.

By C. C. McCULLOH,

Asst. Atty. General