

## Opinion No. 42-4118

July 14, 1942

**BY:** EDWARD P. CHASE, Attorney General

**TO:** Mr. C. R. Sebastian State Comptroller Santa Fe, New Mexico

{\*217} This is to acknowledge receipt of your letter of July 9, wherein you request the opinion of this office as to the legality of payment of certificates of indebtedness of the Taos Municipal School District No. 1.

{\*218} It appears that these certificates were issued for the years 1923 through 1926. It also appears that certain lands in Taos County have been sold by the State for taxes. The question now is whether the Comptroller may apply the proceeds of the tax sales to pay off the above certificates of indebtedness issued by the Taos Municipal School District No. 1.

Section 9, Chapter 203, Laws of 1939, provides in part as follows:

"If there be any outstanding and unpaid accounts against any county or school district funds for any year or years prior to the current year, the State Comptroller may order the money, which would have been credited to current funds hereunder, to be credited to the proper funds for such prior year or years in sufficient amount, if available, to pay such outstanding and unpaid accounts: Provided, however, that nothing herein shall be construed so as to permit any violation of the Bateman Act (33-4241 to 33-4247,, 1929 New Mexico Statutes Annotated)."

Section 33-4241, New Mexico Statutes Annotated, 1929 Compilation provides in part as follows:

"After March 12, 1897, it shall be unlawful for any board of county commissioners, city council, town trustees, board of education, board of school directors of any school district, for any purpose whatever to become indebted or contract any debts of any kind or nature whatsoever during any current year which, 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, and any and all kind of indebtedness for any current year which is not paid and cannot be paid, as above provided for is hereby declared to be null and void \* \* \*"

Section 33-4244, New Mexico Statutes Annotated, 1929 Compilation provides:

"The void indebtedness mentioned in section 1227 (33-4241) shall remain valid to the extent and for the sole purpose of receiving any money which may afterwards be collected and belongs to the current year when they were contracted, and the collection thereof, when made shall be distributed pro rata among the creditors having the void indebtedness, and in the event all of the valid and void indebtedness of any current year

are paid in full and there is money for that current year are paid in full and there is money for that current year remaining the sum shall be converted into the fund for the next succeeding current year."

From the foregoing, I conclude that the State Comptroller, in his discretion, may order the money which would have been credited to current funds under Chapter 203, Laws of 1939, to the payment of outstanding and unpaid certificates of indebtedness of the Taos Municipal School District No. 1.

Trusting that the above sufficiently answers your inquiry, I remain

By WILLIAM R. FEDERICI,

Asst. Atty. General