

**OPINION  
42-95**

July 30, 1942           (OPINION)

SCHOOL DISTRICTS

RE: Funding and Refunding Bonds

Your letter of July 28th addressed to the Attorney General with reference to the question as to whether school districts may draw upon the general fund in payment for redemption of outstanding bonds, has been referred to me for attention.

You refer to an opinion written by the undersigned under date of May 20th, 1942, in which it was held that under section 11 of chapter 235 of the Session Laws of 1929, school districts were prohibited from drawing upon the general fund for the payment of outstanding bonds for reasons therein stated.

You refer to chapter 195 of the Session Laws of 1935, known as the "Funding and Refunding Statute" with reference to existing indebtedness of municipalities.

Section 6 of said chapter provides, among other things:

"That the governing bodies shall create a special fund for each series of bonds and shall cause to be placed therein all proceeds of taxes levied on account thereof. The governing bodies shall also appropriate thereto all of the proceeds of taxes levied for the payment of bonds and the ratio of outstanding taxes against the ration of other indebtedness funded or refunded thereby or anticipated certificates of indebtedness and/or warrants funded pursuant to this Act and any other money appropriated thereto".

This portion of said chapter 195, supra, has heretofore been under consideration and on September 4, 1937, an opinion was issued out of this office in which the particular language quoted was considered as follows:

"Under the language of this statute, it is the duty of the governing body of the municipality issuing the bonds to apply to the payment of such bonds the ratio or proportion of outstanding taxes that have been already pledged for the payment of the indebtedness or other obligations funded through this funding bond issue, which said ration bears to the obligations funded in each issue. For instance, the amount of the bond issue is \$50,000.00, and the amount of outstanding taxes is \$150,000.00, then the proportion is as fifty to one hundred fifty, and one-third of the amount collected of such outstanding pledged taxes should also be applied or paid into the fund provided for the

payment of the funding bond issue, in addition to the special levy made for the payment of such bond issue."

This opinion is found on pages 17 and 18 of the Attorney General's report for the biennium 1936-38.

Under the provisions of said chapter 195 and particularly the language quoted herein, it is the duty of the governing bodies of the municipalities to make the usual irrevocable levy of taxes for the payment of the bonds funded and refunded, and in addition thereto to pay into said fund the proportion of the outstanding taxes collected which were impressed with a lien for the payment of the indebtedness which had been refunded.

You understand, however, that the tax money so collected is not a part of the general fund, but should be paid into the sinking fund when collected. If it has been covered into the general fund and if you are in position from your records to ascertain the amount of same, then, it should be transferred into the sinking fund.

The foregoing, however, does not in any way change or alter the views expressed in our opinion of May 20th. As we said therein the language of section 11 of chapter 235 of the Session Laws of 1929, is specific in its provisions, and it cannot be construed to permit the municipalities to draw upon the general fund in payment of outstanding bond issues for the payment of which provision has been made in other statutes in language equally specific.

ALVIN C. STRUTZ  
Attorney General