MANAGEMENT OF CAPITAL FUNDS AND REAL PROPERTY IN OKLAHOMA PUBLIC SCHOOLS WITH EMPHASIS ON LEGAL IMPLICATIONS

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CHAPTER I

INTRODUCTION

The concept that education is a state function is derived from the tenth amendment to the Constitution of the United States. That amendment reads, "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."[1] Since there is no provision in the Federal Constitution made for the establishment of public schools, it obviously becomes an obligation of the several states. The Constitution of the State of Oklahoma in Article Thirteen, Section One, makes provision for the establishment of a system of free public schools for the education of all youth.[2] To vitalize this constitutional provision, the Oklahoma State Legislature has enacted statutes covering various aspects of school operation. The power of the State Legislature over the public schools is plenary, except as restricted by the State or Federal Constitution. The duty of the Legislature to establish and maintain a system of free public schools

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[1] Constitution of the United States, Amendment 10.

[2] Oklahoma Constitution, Art. 13, Sec. 1.

carries with it the implied power to create, alter, or even abolish districts as a means suitable to accomplishment of that purpose.[3] To accomplish the ends expressed in the State Constitution, the Legislature has created school districts which are governed by local Boards of Education. The powers of local boards have been judicially described in the following language:

> The school board has and can exercise those powers that are granted in express words; those fairly implied in or necessarily incidental to the powers expressly granted, and those essential to the declared objects and purposes of the corporation.[4]

This decision indicates the local Board of Education has been granted a great deal of authority as it operates within the framework of legislative acts. While it is evident that the law must be followed in all areas of public school operation, the one area that seems to require that the "letter of the law" be followed in the greatest detail is in the area of fiscal matters. The concern shown by the tax-payers in the area of fiscal matters can likely be accounted for by their interest in the manner in which their local tax dollar is spent.

As the American people became more aware of the importance of an education, and as the number of school-age

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[3] School Dist. No. 25 of Woods County vs. Hodge, 199 Okl. 81, 183 P. 2d. 575.

[4] Board of Education of Oklahoma City vs. Cloudman, 185 Okl. 400, 92 P. 2d. 837.

children increased, there was a proportionate need for larger capital expenditures. From 1932 to 1957, Americans spent approximately seven billion dollars for capital outlay in the public school—over one-half of the total amount spent for this purpose since the birth of our nation.[5]

During the last half of the twentieth century, millions of dollars will be spent to construct new facilities, remodel existing structures, purchase property, and make general capital improvements in the public schools of Oklahoma. Because of the tremendous amount of public funds involved, it would seem imperative that those trusted with the management of these funds have adequate knowledge and skills for their administration. Public school administrators should possess an understanding of the law as it affects them and their functions when dealing with these large sums of capital.

Purpose of the Study

The purpose of this study was to assemble a body of information that might aid those who are contemplating capital fund expenditures. Careful examination of the literature revealed a limited amount of research in the area of capital fund management and the principles of law by which it is governed. Since there was a lack of

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[5]Lee O. Garber, Law and the School Business Manager, (Danville, Illinois, 1957), Preface.

research done, and information was limited and difficult to assimilate, it seemed necessary to prepare a study in a simplified manner in order that it might be easily read and understood by the layman. At the very best, most school administrators are only vaguely familiar with the statutes, constitutional enactments, and detailed regulations that accompany capital fund management; therefore, a concise study using non-technical language was definitely needed. An attempt was also made to indicate the need for obtaining competent legal advice, not only to rescue school officials from difficulty but to avoid difficulty when managing capital funds.

Major emphasis was placed on the legal implications involved in capital fund management. Capital fund management, as defined for this study, is those activities, processes, or procedures of school administration that deal with the acquisition and disposition of property, expenditure, investment, and accounting for capital funds.[6]

Capital expenditures are those expenditures which normally result in the acquisition of fixed assets or additions to fixed assets. They are expenditures for land, existing buildings, improvements of grounds, construction of buildings, additions to buildings, remodeling of

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[6]Henry H. Linn, School Business Administration, New York, 1956), p. 342.

buildings, and initial or additional equipment.[7]

Since this study was limited to the Oklahoma Public Schools, those funds which were considered by the Oklahoma State Department of Education as capital funds have received major emphasis. In Oklahoma capital funds are the constitutional five mill building fund, capital outlay of the general fund, bond funds, sinking funds, interest on bonds, or any funds concerned with school district debt. One of the major purposes for which capital funds are expended is real property for building sites; therefore, consideration was given to the acquisition and disposition of this property.

Importance of the Study

Education is a multibillion dollar business, and the American public continues to support and have confidence in the most comprehensive common school system the world has known. The role of the school administrator is to provide leadership in many different areas in the total educational program. To provide capable leadership, there are certain competencies or professional skills and understandings that a superintendent must have at his command. However, emphasis on leadership should not be gained at the

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[7] State Board of Education, The State Board of Education Regulations for Administration and Handbook on Budgeting and Business Management, Oklahoma State Department of Education Bulletin No. 145-N (Oklahoma City, 1965-67), p. 113.

expense of any one specialized area in school administration.

For instance, of what value is it for a man to know bonds and the bond market so well that he can gauge the most opportune time to market bonds at a favorable rate of interest plus a premium, if the bond issue is defeated in a community election? On the other hand, it is tragic, indeed, to have a bond issue pass at a carefully planned election only to have much of the money squandered because of poor business management.[8]

The school administrator may be content to leave some of the details of the acquisition of school sites, preparation of school bond issues, selling of bonds, and investment of these funds to those with a high degree of technical competence, such as lawyers and professional bond salesmen. In most instances leaving these matters in the hands of the professionals would be advisable, because there is really no substitute for the school attorney or the bond salesman, since their knowledge and skills are highly technical and the service they render to a Board of Education is essential.

Even though these highly technical matters may be assigned to a specialist in the field, the administrator is not relieved of his obligations and responsibilities. It

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[8]Stephen J. Knezevich and John Guy Fowlkes, Business Management of Local School Systems (New York, 1960), p. 3.

is not only appropriate, but obligatory that the superintendent of schools be knowledgeable of the policies and practices in this particular phase of school finance dealing with capital funds. The special knowledge an administrator should possess in managing capital funds is essential for several reasons.

1. It is important that the maximum capital improvement be obtained with the finances available.
2. The school district should avoid, whenever possible, time consuming and costly legal entanglements.
3. The school administrator should be alert to the need for an understanding of the law as it affects him in his functions.
4. The school administrator needs a background that will enable him to converse intelligently with his attorney on problems of a legal nature.
5. The wise handling of capital funds should aid greatly in valuable public relations for the schools.

In large school systems, delegation of authority for business administration is necessary to a certain degree as far as duties and details of the job are concerned, but delegation of authority certainly does not justify ignorance. The chief administrator does not rid himself of his responsibilities by delegating authority, because the chief executive is held accountable for the acts of his

assistants.[9]

There is a theory that a school business official should earn an amount of money equal to his salary. All may not subscribe to that statement, but the business manager, or the superintendent in a small system, is obligated to manage his district funds wisely. Even if the school official doesn't "earn" his salary in business management, he should at least be able to make a contribution to the school district by such a simple (but often overlooked) opportunity of investing idle school funds.[10]

Procedures Used

Since public school education is a state function, the initial research began with a study of the Constitution of the State of Oklahoma, and the provisions that are contained within the Constitution for the development of the schools. Preparatory to making the study, a thorough research of the statutes of the State of Oklahoma was necessary. The volumes of the statutes which are annotated were used extensively, and care was given to the pocket parts that make it possible to check new laws and amendments of the statutes which are included in the bound part of the volume. Care was given to checking the

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[9] _____. Ibid., p. 4.

[10] "You Can Make Money by Investing Idle Funds," School Management, May, 1962, p. 121-128.

annotations to cases which have interpreted the statutes and the historical sketch of the individual statutes since their enactment. For enactments later than the latest code, supplement, or pocket part, session laws were used. Session laws were used only when specific details were needed for a particular point of law, since pocket parts, or supplements, or revisions of the entire code bring the statutes up to date.

To determine what has happened to a statute since the date of the official state code publication, Shepard's Citations to Statutes were used. The use of these citations was necessary to locate recent legislative enactments that may not have been included in the annotated statutes, or those for any reason omitted from the annotations. To discover every instance where any particular section of any law has been affected by subsequent legislation, it became necessary to use these citations.

Case law was an important aspect in preparing the study. An effort has been made to summarize the essential facts of cases that had a bearing on the particular problem at hand. Defining the major issues in dispute and deducing the legal principles on which the decisions were based has been likewise important. Since there were so many cases on some issues, it became impossible to research all cases on a particular point; therefore, the American Law Reports were used. By using the American Law Reports, it was possible to read only the leading cases and omit

those which involved identical problems, because cases included in American Law Reports are those which are new or deal with questions on which there is conflict of legal opinion. In limiting the study to Oklahoma, many cases of a purely local nature were read, so that all pertinent data involved in the categories under study would be brought to light for the State of Oklahoma.

When capital improvements are contemplated in the form of school building programs, first consideration must be given to the acquisition of school sites for these proposed facilities. Numerous ways in which sites may be obtained are outright purchase, leasing, annexation, adverse possession, eminent domain, and reversion to grantor. First consideration was given to these methods of acquiring and disposing of school property, and they are discussed fully in Chapter II.

CHAPTER II

THE ACQUISITION AND DISPOSITION OF SCHOOL PROPERTY

The Board of Education has the power to purchase, construct or rent, and operate property needed for the maintaining of schools. School boards may also dispose of property no longer needed by the district by sale, exchange, lease or other appropriate methods.[1] They do not, however, have the authority to dispose of school district property for a purely nominal consideration; that is, either to give the property away, or to "sell it for a consideration admittedly inadequate.[2] Furthermore, the Board of Education is without authority to make a gift of school district property to any private person, association, or group of persons, or to dispose of school district property for a "consideration" which is not commensurate with the value of such property.[3]

The most prevalent way for school districts to acquire

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[1] 70 Okl. Sta. Ann. Art. 4, Sec. 22.

[2] Dereig vs. Board of Education of Town of Carnegie, 216 P. 2d 307.

[3] Opinion of the Attorney General of Oklahoma, May 20, 1950, Addressed to Honorable Oliver Hodge, State Superintendent of Public Instruction (in the files of the office of the Attorney General).

or dispose of property is by outright purchase of property needed for school use or simple sale of property that is no longer needed for maintaining school. While outright purchase is the most common method of obtaining property, there are other means whereby property may be acquired by school districts. Some of these are by annexation, lease, adverse possession, and eminent domain. Although simple sale is a likely method to dispose of property, school boards sometime use other methods such as lease, annexation, adverse possession, and reversion to grantor. Each of these methods has been explored in this chapter.

Selection of Sites

One of the first problems to be solved by school boards in planning school construction is the selection of sites upon which to place the contemplated facilities. The selection of school sites has been a source of continuous conflict between school boards and patrons of the school district. As a result of these conflicts, the courts have found it necessary to resolve many disputes.

Where statutes set forth a particular method by which to determine the location of school facilities, the statutory method must, of course, be followed. In the absence of a prescribed method, school officials have broad discretion. In procuring sites and constructing buildings, future needs may be taken into account. Discretion may also relate to size and location of the site. The courts recognize the

impossibility of locating schools which are equally convenient for all pupils, and it is usually no ground for complaint against the school house sites selected that some pupils will be compelled to travel farther than others to reach them.

In 1913, and until 1937, the sites of school buildings were chosen by a majority vote of the people.[4] Now, however, this authority is vested entirely in the Board of Education.[5] Courts emphasize the idea that discretion involves the exercise of judgment, and that in many situations, the judgments of reasonable men might differ. For this reason courts will not interfere merely because the consensus of the district is that school officials were unwise, but only when the facts clearly show that the action was arbitrary and unreasonable—that it has been influenced by considerations other than the public well-being.[6]

The authority given to the Board of Education by the Oklahoma Statutes to select sites carries with it authority to purchase the necessary playgrounds and athletic fields. The land in some instances does not have to be contiguous

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[4] Woods vs. Board of Directors of Union Graded School District No. 36, Stephens County, 133 Okl. 249, 277 P. 424.

[5] 70 Okl. St. Ann. Art. 4, Sec. 22.

[6] 47 Am. Jur., Schools, Sec. 66.

to school-owned property.[7] The term "school site" in its common acceptation, and as commonly understood, refers to a parcel of ground, sufficient in size, upon which to erect a school building, and a yard surrounding the same, to be used for the children while at school.[8]

The question came to the attention of the Attorney General as to whether a school district in the state of Oklahoma could acquire and own a piece of land outside of that particular school district. There was no applicable statute under which a Board of Education of a school district could acquire property in another school district other than the one it represented. In the absence of a statute expressedly authorizing a school district in Oklahoma to acquire and own a school building site in another school district, it seems to have been contemplated by the Legislature that a school district can own sites and build school buildings only within its own geographical area.[9]

Leasing

Under certain conditions Boards of Education may lease needed facilities. Considerable discretion is allowed

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[7] Board of Education vs. Woodworth, 89 Okl. 192, 214 P. 1077.

[8] _____. Ibid.

[9] Opinion of the Attorney General of Oklahoma, March 18, 1963, Addressed to Honorable Oliver Hodge, State Superintendent of Public Instruction, (in the files of the office of the Attorney General).

school officials regarding the type of premises which may be rented, so long as they are reasonably well adapted to school purposes. Statutes in some states put limitations on the authority to rent. In Oklahoma the statutes are clear on this point. They provide that the Board of Education of each school district shall have power to "purchase, construct, or rent, and operate and maintain, classrooms, libraries, auditoriums, gymnasiums", and certain other buildings and places.[10] The term "rent" as used here, signifies, among other things, a lease.[11] In this same opinion the Attorney General had stated that the Board of Education of a school district could legally pay "out of one year's budget", the total amount of money for a ten years' lease on a building to be used as a gymnasium and auditorium.

In Newkirk, Oklahoma, an Attorney General's opinion was asked concerning the legality of a political subdivision of the state government leasing a building site to the local Board of Education. In this particular instance, it was land surrounding the county courthouse of Kay County, which was under the jurisdiction of the County Commissioners. The Newkirk High School, which was located in

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[10] Title 70, Oklahoma Session Laws, Chap. IA, 1949.

[11] Opinion of the Attorney General of Oklahoma, February 14, 1951, Addressed to Honorable Oliver Hodge, State Superintendent of Public Instruction, (in the files of the office of the Attorney General).

the same block, was being razed, and new construction was started on the same block. The new construction required more area than the old, and the County Commissioners were willing to lease the land on a long term basis to the Newkirk School District for a building site. The question arose as to the legality of this transaction.

In considering whether or not a contract between two political subdivisions of government is lawful, such a contract must be considered from the standpoint of both parties. In other words, assuming the Board of County Commissioners has authority to lease the land in question to the school district, does the school district have authority to enter into such a lease? With these conditions prevailing, attention should be directed to the Oklahoma Constitution as follows:

> No county, city, town, township, school district, or other political corporation, or subdivision of the state, shall be allowed to become indebted, in any manner, or from any purpose, to an amount exceeding, in any year, the income and revenue provided for such year, without the assent of three-fifths of the voters thereof.[12]

Section 26, Article 10, of the Oklahoma Constitution has formed the basis of the decision rendered in a number of cases involving school districts and municipal corporations of various kinds. The Oklahoma courts have repeatedly held that contracts, executed or executory, entered into in one fiscal year which in any way seek to bind the

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[12]Oklahoma Constitution, Art. 10, Sec. 26.

revenues of a succeeding fiscal year are void.[13] If however, the entire consideration for said lease would be paid in the same year in which it is executed, the Attorney General ruled this would be a legal contract. It should be pointed out here that whoever contracts with a municipality or school district is charged with the responsibility of having knowledge of its limitations.[14]

Sometimes it becomes necessary or practical for a school district to lease to other parties some of the property which it may own, but which is not presently being used. The important thing to consider here is whether the property is suitable, or is now being used by the school district. In one Oklahoma Supreme Court case, it was held that a Board of Education had the authority to lease land "which has become unsuitable, or is not needed for school purposes".[15] This case was cited by the Attorney General in an opinion that the Broken Bow School District could lease property that it at present, was unable to develop and use for school purposes.[16]

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[13] _____. Ibid.

[14] Consolidated School Dist. No. 6 vs. Panther Oil and Grease Mfg. Co., 197 Okl. 66, 168 P. 2d 613.

[15] Atlas Life Insurance Co. vs. Board of Education of the City of Tulsa, 83 Okl. 12. 200 Pac. 171.

[16] Opinion of the Attorney General of Oklahoma, June 8, 1940, Addressed to Honorable A. L. Crable, State Superintendent of Public Instruction, (in the files of the office of the Attorney General).

Annexation

Frequently a school district will acquire property by annexation. When the area affected comprises an entire school district, the district to which it is annexed becomes the owner of all the property and other assets of the district which it forms.[17] If an entire school district annexes to two or more districts, the property and other assets of the disorganized district may be divided by agreement between the Boards of Education of the annexing districts. The proper method for division of these assets when two annexing districts are involved should be according to their proportionate interest therein. Even in the event that one of the receiving districts has received the major share of the dissolved district, none of the property can legally be sold by either without the consent of the other.[18] If the Boards of Education are unable to agree on the division of property, the matter shall be decided by the State Board of Education and its decision shall be final.[19]

While the school district to which another school district is annexed receives all property, the receiving

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[17] 70 Okl. Sta. Ann. Art. 7, Sec. 4.

[18] Opinion of the Attorney General of Oklahoma, September 21, 1949, Addressed to Honorable Oliver Hodge, State Superintendent of Public Instruction, (in the files of the office of the Attorney General).

[19] 70 Okl. Sta. Ann. Art. 7 Sec. 4.

district must also become liable for the current debts and other obligations of the annexed district. If more than one district receives annexed territory, the division of obligations according to the proportionate part of the assessed valuation of the annexed district acquired is an appropriate method to distribute obligations.[20]

The Oklahoma Statute that authorizes annexation of all or part of a school district also provides that when the area to be annexed is not an entire school district, the annexing district does not acquire any of the assets of the district from which the area affected is detached.[21] This was further explained in the words of the Attorney General when he expressed the following viewpoint:

> A part of a school district cannot legally be annexed to another school district if the result is to leave the territory remaining in the district (from which territory is taken) without a school house.[22]

Conversely, if the remaining territory of the district has sufficient facilities for the pupils, there seems to be no legal objection to annexation of a part of a district which results in one of the district's buildings being

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[20]Opinion of the Attorney General of Oklahoma, November 30, 1959, Addressed to Honorable Oliver Hodge, State Superintendent of Public Instruction, (in the files of the office of the Attorney General).

[21]70 O. S. 1951 Art. 7, Sec. 4.

[22]Opinion of the Attorney General of Oklahoma, November 1, 1951, Addressed to Honorable Oliver Hodge, State Superintendent of Public Instruction, (in the files of the office of the Attorney General).

located in an annexing district. However, the building remains the property of the district from which the territory is detached.[23] Even in the case where the legal description of a portion of a district to be annexed included a school building and its site, the building did not go to the district which was receiving the territory.[24]

Adverse Possession

Schools have on occasion, though infrequently, obtained title to property by adverse possession. Adverse possession occurs when the true title holder to property fails to assert his right of ownership for a specific length of time and allows others to use the property as if it were theirs, thus losing his possession of the property. Because of its unique characteristics as a method of gaining or losing title to property, it is said to be a possession in opposition to the true title and real owner; a possession which is commenced in wrong and is maintained in right.[25]

School districts are on essentially the same basis as individuals in securing property by adverse possession. To secure title to property by adverse possession a school district must show that it has held and used the property

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[23] 70 O.S. 1951, Art. 7, Sec. 4.

[24] Wilds vs. Golden, Okl. 330 P. 2d 373.

[25] 1 Am. Jur., Adverse Possession, Sec. 2.

in a way that is inconsistent with and adverse to, a holding and use by the other party, and that such holding by the district has covered the period of time stipulated by the statute of limitations. Modern statutes of limitation operate, as a rule, not only to cut off one's right to bring an action for the recovery of real property which has been in the adverse possession of another for a specified time, but also to vest the disseisor with title.[26]

School District No. 2 in the town of Wainwright, Oklahome, was contemplating using the proceeds of a bond issue to construct school buildings on real property that they had held and used for twenty-nine years, but to which they did not have clear title. An opinion was requested from the Attorney General as to whether this would be advisable or not. The Attorney General advised the school district that they should take the position that the school district was the actual and exclusive owner and would owe the record owner nothing for the right to use the same; however, that fact cannot be established by an opinion of the Attorney General, or by any process other than by a suit to quiet title, prosecuted to conclusion in a court of competent jurisdiction.[27]

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[26] Stolfa vs. Gaines, 140 Okl. 292, 283 P. 563.

[27] Opinion of the Attorney General of Oklahoma, February 5, 1941, Addressed to Honorable A. L. Crable, State Superintendent of Public Instruction, (in the files of the office of the Attorney General).

Eminent Domain

Eminent domain is defined simply as the right to take private property for public use with reasonable compensation being paid to the owner. In most states local school boards are specifically empowered by statute to acquire property and to construct buildings necessary for the public schools. Even in the absence of such express statutory authority, the courts uniformly have upheld as an implied power the right of school boards to buy property. In most jurisdictions school boards can acquire land by eminent domain where it is impossible to purchase it.

Article 2, Section 24, of the Oklahoma Constitution specifically grants the power to take private property for public use. This grant of power by the Oklahoma Constitution has been vitalized by the State Legislature for the various public agencies. Public schools have been granted the power to "acquire property by condemnation proceedings in the same manner as land is condemned for railroad purposes".[28] If one traces the history and development of the law of eminent domain, it can be shown that political philosophers, the courts, and the many forms of government have interpreted the right of eminent domain under many theories of law. It is now generally accepted that the power and right of eminent domain is not a property right,

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[28] 70 Okl. St. Ann. Art. 4, Sec. 22.

or an exercise by the state of an ultimate ownership in the soil, but it is based upon the sovereignty of the state.[29]

Since the states are not prohibited by the Constitution of the United States from taking property within the jurisdiction of a state for the public use upon payment of compensation, it follows that it is within the sovereign power of a state to do so and needs no other justification.[30]

Condemnation is regarded as an extreme measure in securing land for school use; therefore, the extent of the estate as well as the area of the tract is strictly limited by the public need. Usually, where land is taken for school purposes by exercise of the right of eminent domain, in the absence of statutes to the contrary, the courts hold that title remains with the original owner, and when the land is no longer used for such purposes it reverts to the original owner or his heirs. On the other hand, if the statutes that authorize the power of eminent domain give authority to acquire title in fee simple, school districts may have complete title with no limitations, and in such circumstances the owners have no right of reversion.[31] It is generally held that school needs do not demand a fee

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[29] 27 Okl. St. Ann. Introduction.

[30] Shoemaker vs. U. S., 13 S. Ct. 361, LR 7 U.S. 283 37 L. Ed. 170.

[31] Robert L. Drury, Law and the School Superintendent, (Cincinnati, 1958), p. 154.

simple title to land taken by eminent domain.

Generally, the courts hold that no more land may be taken by the exercise of eminent domain than the public necessity requires, and that school districts must have definite plans for the use of the property which they seek to condemn.[32]

The determination of what property shall be taken, the need for property, and the suitability of property are matters vested in the discretion of Boards of Education and such discretion is not subject to interference by the courts unless it is abused. Whether or not Boards of Education can condemn property which belongs to another public agency is a question on which there has been little agreement.[33]

If an intended school use of land conflicts with some other public use, such as use for a public park or highway, courts give precedence to the use for which the land is most imperative. The power of eminent domain cannot be invoked for the purpose of taking it for a second public use which is wholly inconsistent with the former use and which would entirely supersede and destroy the use to which the land is already devoted.[34] The Oklahoma Statutes do

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[32] _____. Ibid.

[33] _____. Ibid., p. 155.

[34] Oklahoma City vs. Local Federal Savings & Loan Association of Oklahoma City, 192 Okl. 188, 134 P. 2nd. 565.

provide some "exceptions" to this general rule. For instance, railroad corporations are expressly authorized to appropriate so much of any road, street, alley, public way, or ground of any kind as may be necessary for the purposes of such road. Public property owned by the state or by a county school district, or Board of Education, and which is wholly within the limits of a city or town, may be appropriated by such city or town where necessary for the opening, widening, or extending of streets or avenues in such city or town.

Reversion to Grantor

Land on which to construct buildings is often conveyed to school districts with the intention that it shall revert to the grantor if it ceases to be used for public school purposes. For reversion to take place, it must be clearly incorporated in the deed. Reversion usually takes place either on a condition subsequent or a conditional limtation. When the property is granted on a condition subsequent, the person who grants the land must re-enter and assert title to the property, when it ceases to be used for school purposes, if it is to revert. When the grant is on a conditional limitation, such as "only as long as the land is used for public school purposes", the title will revert immediately upon discontinuance of the property for school use and the grantor does not have to assert his claim to the title. Since conditions for

reversion tend to destroy estates, courts do not favor them and construe deeds strictly against the grantors, on the theory that since the deed is the act of the grantor, it will be construed most strongly against him.[35] Such an interpretation is also justified by the courts on the theory that a grantor is in a position to determine the conditions of his grant, and that if he wants the land to revert under certain conditions, he should make the deed clearly set forth that intention.

When a deed provides that property shall revert to the original owner when no longer used for school purposes, the question may arise as to what in fact constitutes abandonment. In an Oklahoma Supreme Court Case, the court did not allow the school site to revert to the grantor when the school district was subsequently annexed to another school district. The court ruled the intention to abandon may not of itself constitute abandonment if the board changes its mind before the property is in fact abandoned.[36]

In a similar case the deed to school property recited that the land was to remain property of the district, "so long as it may be used for School District No. 96," which was plain and unambiguous, and was in no way to make ownership by the district dependent upon the actual holding of

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[35] Newton Edwards, The Courts and the Public School, Chicago, 1955, p. 343-344.

[36] Krieger vs. Consolidated District No. 2. Vanoss, 205 Okl. 18.

school in a school house erected on the property.[37] The abandonment of a site for school purposes acquired by eminent domain will result in its reversion under the general rule that the school district acquires not the fee, but only the right to use and occupy the land so taken.[38]

Where land is conveyed to a school board upon condition that it will revert to the grantor when no longer used for school purposes, the board may use it for other than school purposes so long as a school is conducted upon it. This is not true of all states in the United States, but is generally true in Oklahoma. It has been ruled the additional use of school property for the purpose of producing oil will not warrant a forfeiture of property, when the grant of real estate for use as a school house site was coupled with a condition subsequent.[39]

An attempt has been made to show the various methods by which a school district may acquire or dispose of school property. While there are a number of ways in which this may be done, the most common way is outright purchase of property needed for school sites and to sell that property no longer needed for school purposes.

School funds of several different types and coming

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[37] Carnin vs. Simon, 203 Okl. 234.

[38] Carter vs. Davis, 141 Okl. 172.

[39] Priddy vs. School District No. 78, Cotton County, 92 Okl. 254.

from different sources may be used to purchase real estate for the location of school facilities. One type of school funds that has been used extensively by schools in Oklahoma for this purpose is the constitutional building fund. This topic and the legal implications involved will receive treatment in the succeeding chapter.

CHAPTER III

CONSTITUTIONAL BUILDING FUND

A provision in the Oklahoma Constitution authorizes a building fund levy by school districts. This levy was intended to provide a method whereby school districts not wishing to become indebted for the purpose of erecting buildings, might levy an annual tax for such purpose. The governing board has the power to allow proceeds of successive levies authorized by vote of the people to accumulate and be expended together. The building fund of school districts consists of all moneys and any interest or profits derived from the proceeds of a building fund levy of not to exceed five mills on the dollar of assessed value of taxable property in such school district. The building fund levy must be voted by the people of a school district pursuant to the provisions of the Oklahoma Constitution.[1]

The part of the Oklahoma Constitution which pertained to the building fund remained intact from its original writing until it was amended by referendum petition in 1955. Prior to 1955 the legal uses of the building fund were for the erection of buildings only. That is, it did

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[1] Oklahoma Constitution. Art. 10, Sec. 10.

not authorize the use of building funds for repairing or remodeling school buildings, nor did it expressly authorize purchasing furniture for schools. However, in construing the meaning of the words "erecting public buildings", the Supreme Court of Oklahoma has continually shown a marked disposition to give a very broad and liberal construction to this section of the Constitution. This point concerning liberal construction of the Constitution is well illustrated in the case of Oklahoma County Excise Board vs. Kurn.

> We conclude that Sec. 10, Art. 10, of the Constitution, authorizing a direct levy for the purpose of erecting school buildings, includes the inherent and implied power to apply a portion of the proceeds derived from such increase to purchase of necessary equipment which permanently becomes a part of such newly constructed buildings, and we so hold. We further conclude, and hold, that seats and desks for such a building are proper and necessary equipment therefore. In so holding, however, we desire to make it clear that under our decision it is necessary to install said equipment as a part and parcel of the building when the erection takes place. Otherwise, it would be in the nature of repairs, which is not covered by Sec. 10.[2]

At the time of the above quoted decision, which was obviously prior to the amendment of 1955, the only reason stated by the court for its holding that equipment must be installed "as a part and parcel of the building when the erection takes place" was that otherwise it would be in the nature of repairs, and this was not authorized by Section

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[2] Oklahoma County Excise Board vs. Kurn, et al., 189 Okl. 203, 115 P. 2d 113.

10 at that time. If this be the case then, the inclusion in the amended section which expressedly granted the authority to purchase "furniture" must have been intended to authorize the purchasing of items in addition to such "permanent furnishings" as desks and chairs.[3] It would seem to follow that, even if the amended section made no express reference to "furniture," the building fund could now be used for purchasing necessary desks and chairs, either at the time the building was erected or thereafter. If this is so, then the inclusion in the amended section of express authority to purchase "furniture" undoubtedly authorizes the purchasing of items in addition to such "permanent furnishings" as desks and chairs, and we believe that this is a further indication of an intent that the words used in Section 10, Article 10, should be construed in a "broad sense".[4]

In an Attorney General's opinion in regard to the expenditure of bond moneys voted for 'school furniture' it was ruled that items of capital outlay, such as refrigerators, typewriters, sewing machines, and other items of school furniture and equipment which are reasonably essential as part of the officially authorized course of

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[3]Opinion of the Attorney General of Oklahoma, August 12, 1955, Addressed to Honorable Oliver Hodge, State Superintendent of Public Instruction, (in the files of the office of the Attorney General).

[4]_____. Ibid., p. 1.

instruction to be taught in school, would be a proper expenditure.[5] In view of this ruling which was before the amendment, it became evident that the Oklahoma Constitution as amended, should be construed in a broad sense, and if so the building fund could be used for purchasing items such as the ones mentioned above, either at the time the school building is erected or thereafter. Naturally it would be necessary for the items purchased to be reasonably necessary and consonant with the recognized objectives and purposes of the public schools.

On various occasions the levying and expenditure of building funds has been tested in court because of the difference in opinion as to the definition of the word "building". The word "building" is sometimes construed in the "broad sense" and in other cases in a "narrow or restricted sense". "Building" is described in Corpus Juris Secumdum in the following manner:

> It has been said that 'building', in its broad or in its primary sense, refers merely to that which is built; that it comprises any edifice erected by the hand of man of natural materials, as wood or stone, brick or marble; and that it is susceptible without a violent interpretation of being construed as including many kinds of edifices and structures erected by man, which are not of the same general character as dwellings, stores, offices, or barns. The work has been defined or employed as meaning anything constructed; a thing built; or that which is built;

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[5]Opinion of the Attorney General of Oklahoma, March 27, 1948, Addressed to Honorable Oliver Hodge, State Superintendent of Public Instruction, (in the files of the office of the Attorney General).

> and more specifically an edifice for any use; an erection; a fabric built or constructed; a structure; any structure with walls and a roof; also a block of brick or stone work, covered in by a roof.[6]

In line with this definition, would it be legal to construct "bleachers on a football field"? It would seem obvious that the activities promoted by this type of construction are well within the recognized sphere of public school activities. The fact that the statute authorizes funds to be appropriated for maintenance or recreation places and playground does not exclude the erection of buildings for any such proper school purposes. The provision of the Oklahoma Constitution under consideration here is clearly a reservation to the people of the school district of the right to vote an additional tax levy for the purpose of erecting public buildings. The section contains no specific words indicating an intention to restrict the term "building" to any particular type of building or edifice or structure. It can scarcely be denied that its object was to provide a method for acquiring permanent improvements by a fund to be raised in addition to the current expense fund, and therefore, no implication was found which would warrant a construction other than that the right is reserved to construct any edifice of a permanent nature consonant with the recognized and proper object and

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[6] 12 Corpus Juris Secundum, p. 378.

purpose of the public schools.[7] There is reason then, to believe that the power is implied by the Constitution to build such a structure. The general rule involving constitutional construction of implied powers is stated as follows:

> It would not be practicable, if possible, in a written Constitution, to specify in detail all of its objects and purposes or the means by which they are to be carried into effect. Such prolixity in a Code designed as a frame of government has never been considered necessary or desirable; therefore, constitutional powers are often granted or restrained in general terms from which implied powers and restrictions to be found in constitutional provisions are therefore a very important element to be considered. It is an established rule of construction that, where a Constitution confers, by implication, all powers that are necessary for the exercise of the one or for the performance of the other..[8]

In a Missouri case the court had under consideration a provision of the Missouri Constitution, which is in terms very similar to the provisions of Section 10, Article 10, of the Oklahoma Constitution. There the court held that the authority granted by the Constitution, when its requirements are complied with to increase a levy for the erection of a school building, carries with it, as a necessary sequence to its erection, the right to equip same.[9] There are very few decisions covering the involved

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[7] Lowden vs. Jefferson County Excise Board, 190 Okl. 276, 122 P. 2d 991.

[8] 12 Corpus Juris, p. 719.

[9] Hudgins et al. vs. Mooresville Consolidated School District, 312 Mo. 1, 278 W. 769.

question. The weight of authority, however, seems to be that the constitutional and statutory power to erect a building, by implication, includes the power to erect any building consonate with the objectives of the institution, and likewise the power to put into it by the same levy the equipment necessary to place it in condition for its intended use.

Validity of Statutes

It has been contended that funds collected for the purpose of erecting public buildings under the provisions of the law regulating building funds may not be allowed to accumulate, but must be expended during the fiscal year for which they are collected. However, the opinion of the courts does not agree with this line of reasoning. There are three methods by which school districts may provide for the erection of school buildings: (a) by appropriating for such item within the current expense fund,[10] (b) by issuing bonds for such purpose,[11] and (c) by authorizing a building fund levy.[12] None of these methods are exclusive.[13]

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[10] Oklahoma City Excise Board vs. Kurn, 184 Okl. 96, 85 P. 2d 291.

[11] Board of Education vs. Woodworth, 89 Okl. 192, 214 P. 1077.

[12] Oklahoma City Excise Board vs. Kurn, 184 Okl. 96, 85 P. 2d 291.

[13] _____. Ibid., p. 97.

In view of the other methods provided for financing the erection of public buildings, it seems reasonable to suppose that the framers of the Constitution, by Section 10, Article 10, intended to provide a method whereby school districts not wishing to become indebted could use the later method.[14] If school districts were denied the right to allow the various building fund levies to accumulate and be spent together, many small districts would be deprived of this means of financing a new building, for few districts have an assessed valuation sufficiently large to erect a building with the proceeds of a single five-mill levy. Bond issues for school sites and buildings are not in conflict with the section dealing with the constitutional building fund. This section has no application to the issuing of bonds, but applies when an attempt is made to construct a public building by the levy of a direct tax which is authorized by this section. In one of the court cases already mentioned, it was contended that the building fund levy was the only method by which to raise funds to erect public buildings.[15] The court did not agree. While the court never passed directly upon this question, it has upheld bond issues for the purpose of erecting school buildings in a number of other

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[14] Lone Star Gas Co. vs. Bryan County Excise Board, 193 Okl. 13, 141 P. 2d 83.

[15] ____. Ibid., p. 14.

cases.[16]

Appropriation of Funds from Sale of Buildings

A taxpayer's suit was filed in the District Court of Oklahoma County against the members of the Board of Education of Oklahoma City, to recover money allegedly paid out by the board in violation of the law. According to the petition, the allegedly illegally expended funds were derived from the sale of a school building and grounds. Upon receipt of the money the Oklahoma City Board of Education placed it in a special account or fund designated as "building replacement fund," and expended the same during the fiscal year received for additions and improvements on other schools in the district. The petition revealed that the school which was sold was erected with funds derived from a bond issue and later was enlarged with funds from another bond issue. When the school was sold, the school district was indebted for a sum in excess of the amount received at the school sale. In substance the plaintiffs' complaint was that the money obtained from the sale was misappropriated by the defendants in that the money was not used for the purposes for which it was originally borrowed, in violation of Section 17, Article 10,

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[16] Williams et al. vs. School District, 55 Okl. 356, 166 Pac. 515; Mason et al. vs. School District No. 72. Blaine Co., 660 Okl. 239, 168 Pac. 798; Lowe vs. Consolidated School District, 79 Okl. 115, 191 Pac. 737.

of the Oklahoma Constitution; and, second, that the money was expended by the board without an appropriation as required by law. Plaintiffs took the position that the money in question should have been accounted for in the budget of the school district and that it should have been placed in the sinking fund, to the extent of the needs thereof, to reimburse the taxpayers for the money originally borrowed to erect the school. The remainder, if any, should be placed in the general fund of the district for the year in which the money was received. If not appropriated in the current fiscal year, all the money, or the balance thereof unappropriated, should apply in like manner to the succeeding fiscal year.[17] The defendants said they relied on an earlier decision of the courts as defining their authority when they disbursed the funds in question. In the opinion of the court, the defendants in relying on the decision as defining their authority, were within their legal rights as public officials. The expenditure was made in conformity to the rule stated above; therefore, the officers should not be penalized at this time for acting pursuant to the law so interpreted by this court.[18] The Board of Education based its decision on an earlier pronouncement which allowed expenditure of funds

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[17] Grimes vs. Board of Education of Oklahoma City, 186 Okl. 665, 99 P. 2d 876.

[18] _____. Ibid.

without appropriation. A later court ruled that this decision was unsound, unsupported by the decisions, and an improper interpretation of the constitutional provisions. That ruling so far as it would authorize the investment, without appropriation, of the funds derived from the sale of a public building was overruled.[19]

Election

The rate of tax must be specified when the vote is taken on all or any part of the constitutional building fund. Where the statute requires a series of acts to be performed before the owners of the property are properly chargeable with the tax, such acts are conditions precedent to the exercise of the power to levy the tax, and all the requirements of the statute must be complied with, or that tax cannot be collected.[20]

Executive and ministerial officials enforce the tax laws, but in doing so they must keep strictly within the authority those laws confer. They can perform their duties only in the manner prescribed by the law, which would be the governing rule for their conduct in levying taxes in all cases. A substantial compliance with the requirements of the law is absolutely necessary before the machinery

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[19] _____. Ibid.

[20] Prince vs. St. Louis & S. F. Ry. Co., 110 Okl. 141, 237 P. 106.

for levying and collecting taxes can be legally set in motion and property subjected to a tax. A certificate of vote at a school election, to authorize an extra levy for school purposes, which showed on its face "that increased levy sufficient to cover needs", does not comply with 68 Okl. St. Ann. Section 281. So an election failing to specify rate of additional levy, was void, and taxes paid on such levy under protest may be recovered by appropriate action.[21] A tax cannot be imposed without fixing the rate.[22]

Refunds to Taxpayers

What procedure should be followed in the appropriation of a building fund balance, when a school district is discontinued and transfers its students to other districts? In a situation of this sort a suit was brought against a school district to force said district to refund to the taxpayers a balance left in the building fund. The protestants contended that the district budget showed a sum of money in the building fund and with no need being shown for the use of it during the year; thus making it an unrequired building fund surplus and should be refunded to the taxpayers. Under the provisions of the Constitution the money cannot be directly refunded to the taxpayers, but

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[21] _____. Ibid., p. 107.

[22] State vs. Board of Examiners (Mont.) 104 Pac. 1055.

must be used to reduce the tax levy for the sinking fund, if any, of the school district involved, or, in the absence of sinking fund obligations, be used to reduce the tax levy for the general fund.[23]

When the governing board of a school district determines by a resolution in writing that a surplus exists in any building fund created under the provisions of the Constitution, and such surplus is not required for the completion of the purpose for which the taxes were levied, the tax may be refunded. When construction has been abandoned any surplus may be then refunded to the taxpayers (however, indirectly) by the county excise board. The refund shall be used to reduce the tax levy for the sinking fund of the school district. Any portion of the building fund surplus not required to eliminate a sinking fund tax levy for the school district shall be refunded to the taxpayers by reducing the tax levy for the general fund of that district.

As shown by Section 333, of the Oklahoma Statutes quoted above, before any money in a building fund created and not needed may be "refunded to the taxpayers" there must be a proper resolution in writing by the governing board declaring that a surplus exists in such fund, or that the proposed construction has been abandoned. No such resolution was adopted, so far as the record shows in the

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[23] 62 O.S. Supp. 1945 Sec. 333, 334.

case under study.[24] In the absence of the proper resolution, evidence was insufficient to require the excise board to "refund" the money. The protest was denied.

[24] Mid-Continent Pipe Line Co. vs. Creek County Excise Board, 197 Okl. 217, 169 P. 2d 744.

CHAPTER IV

SCHOOL BUILDING BONDS

The practicing administrator will sometimes face the problem of adequately financing certain capital expenditures which cannot be provided for within available current funds. He then must make the decision to determine if the situation as it exists justifies going into debt. Some states and communities have attempted to operate under what are known as pay-as-you-go laws, but is seems evident that this method of financing capital improvements is rarely satisfactory. One example of this is the constitutional building fund in Oklahoma, which was discussed in the preceding chapter. Since these laws are not adequate for financing all capital improvements, the most desirable alternative seems to be voting bonds and creating debt for needed facilities.

Generally a school district or any political subdivision of the state government will be limited by the state Constitution or by statute as to the amount of indebtedness that may be incurred. Usually there will not be a limitation upon the amount of indebtedness only, but on the type, length of time, and purpose for which bonds can be issued. Going into debt permits school districts to provide needed

facilities and to spread the cost over a period of time. There is a great deal of merit in the concept of buying needed capital improvements and spreading the cost over the length of the life of the improvement. The installment buying plan is coming to be a way of life for the average American. Millions of Americans have enjoyed material benefits purchased by installment plan buying which they could never have obtained if they had been required to pay cash for the total price of the desired goods. Installment plan buying has undoubtedly contributed to our material prosperity and vastly expanded consumer markets. It has also greatly increased consumer credit and individual debt. The same holds true for school districts. If it were a prerequisite that the total amount of money needed for the capital improvement be available in the current expense budget of the district, many school buildings would never have been built. This, then, leads us to investigate the practicability of voting bonds to finance large capital improvements.

The debts of school districts are created in a number of different forms. Registered warrants, bonds, and short-term loans are familiar examples. Unlike school district warrants, the general obligation bonds of a school district are usually regarded as negotiable instruments and subject to the Uniform Negotiable Instrument Laws.[1]

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[1] Richey vs. Fidelity & Dep. Co., 105 F. (2d) 348, 123 A.L.R. 1352.

Special provisions are usually found in the statutes that are applicable to all forms of public debt. The only type of school debt to be considered here is school bonds.

A school bond is similar in some ways to the private corporation bond, but different in others. A bond may be defined as a written financial instrument issued by a corporate body to borrow money with the time and rate of interest to be charged, method of principal payment, and the term of the debt clearly expressed.[2] The maximum amount of interest payments, the length of term of the issue, the size of bond denominations, school bond elections, and related information are carefully regulated by law in most states. The voting of school bonds and the debt service that naturally follows is growing in importance as exemplified by the growing volume of literature dealing with the subject, and its importance is succinctly summarized in the following statement:

> Borrowing money by school districts is so common as to appear to be a normal function of all school boards. In the aggregate, school districts borrow tremendous sums which cost millions of dollars in interest charges and which directly buy no education. These transactions require much knowledge, time, and trouble by school officials of all levels. To be conducted wisely and safely, they require the best financial and legal advice available. So numerous are the blunders committed in such borrowing that thousands of letters are received by state officials asking for information and for aid in righting wrongs. Special legislation is often sought from the State General Assembly and pleas are made in the courts to correct illegalities. The handicaps placed

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[2]Stephen J. Knezevich and John Guy Fowlkes, Business Management of Local School Systems (New York, 1960), pp.214.

> upon school boards in respect to sound fiscal policies to correct bad practices and to develop efficient procedures make these problems of prime importance in all school administration.[3]

It has repeatedly been expressed that school districts are corporations with limited powers. The courts have been very generous in interpreting the law as it pertains to the operation of the school, but laws regulating school district indebtedness are interpreted very conservatively. A statement by a federal court outlines this principle.

> First ..... an express power conferred upon a municipal corporation to borrow money does not in itself carry with it an authority to issue negotiable securities; second, that the latter power will never be implied, in favor of a municipal corporation, unless such implication is necessary to prevent some express corporate power from becoming utterly nagatory; and, third, that in every case where a doubt arises as to the right of a municipal corporation to execute negotiable securities the doubt should be resolved against the existence of any such right.[4]

In the absence of requirements as to procedure, school boards may adopt their own procedures in administering the school debt. But where procedural requirements are stated, the authority of school district officials is dependent upon its observance of the stipulations. "The mode is the measure of the power." If the statutes provide that certain procedures shall be followed, failure to follow them

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[3]Herbert Mulford, "When the School Board Has to Borrow,. Mimeographed Bulletin (Wilmette, Ill. Wilmette Public Schools, 1945).

[4]Ashuelot National Bank of Keene vs. School District, 56 F. 197.

will ordinarily void the action unless the provisions are held to be directory rather than mandatory in nature. As a general rule, the authority to issue bonds must be clearly and expressly conferred by statute upon a school board.

The law relating to school debt is primarily statutory, although the statutes are subject to the limitations of both federal and state Constitutions. Statutory provisions vary from state to state. Therefore, it is essentail that a finance officer be familiar with the statutory enactments of his own state. A considerable body of case law has also been accumulated in relation to constitutional and statutory provisions regulating school debt.

In Oklahoma the provision for the creation of an indebtedness by any political subdivision of the state government is found in the Constitution, and is written as follows:

> No county, city, town, township, school district, or other political corporation, or subdivision of the State, shall be allowed to become indebted, in any manner, or for any purpose, to an amount exceeding, in any year, the income and revenue provided for such year, without the assent of three-fifths of the voters thereof, voting at an election to be held for that purpose, nor in cases requiring such assent, shall any indebtedness be allowed to be incurred to an amount including existing indebtedness, in the aggregate exceeding five per centum of the valuation of the taxable property therein, to be ascertained from the last assessment for State and county purposes previous to the incurring of such indebtedness: Provided, that any county, city, town, township, school district, or other political corporation or subdivision of the State, incurring any indebtedness, requiring the assent of the voters

> as aforesaid, shall, before or at the time of doing so, provide for the collection of an annual tax sufficient to pay the interest on such indebtedness as it falls due, and also to constitute a sinking fund for the payment of the principal thereof within twenty-five years from the time of contracting the same.[5]

On April 5, 1955, the section of the Constitution quoted above was amended by referendum petition. The major changes made at that time in the above section were the increasing of the assessed debt limitation from five per centum to ten per centum of assessed valuation, and enumerating express purposes for which the proceeds from bond issues could be used. Prior to the amendment the Constitution had been silent on the latter point. Purposes named in the amendment were the following: "Acquiring or improving school sites, constructing, repairing, remodeling or equipping buildings, or acquiring school furniture, fixtures, or equipment."

State Bond Commissioner

The Attorney General is the ex officio Bond Commissioner of the State of Oklahoma.[6] It is the duty of the Bond Commissioner to prepare uniform forms and prescribe a method to issue public securities or bonds, in any county, township, municipality or political or other subdivision of the State of Oklahoma. The Attorney General

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[5] Oklahoma Constitution, Article 10, Section 26.

[6] 62 Okl. St. Ann. Section 11.

must examine and pass upon any security issued, and determine whether or not the security is issued in accordance with the forms and procedures prescribed. Unless suit is brought in a court having jurisdiction within thirty days from the date of the approval of the bonds by the Bond Commissioner, the bond shall be incontestable in any court in the State of Oklahoma.[7]

No bond or evidence of indebtedness in the State of Oklahoma shall be valid unless it has been endorsed and certified by the Auditor and Attorney General of the state; the purpose being to give evidence that the debt or bond has been issued pursuant to law and is within the debt limit. The bond or debt must also be endorsed and certified by the County Clerk, and the County Attorney stating that the bond, or evidence of debt, is issued pursuant to law, and that the issue is within the debt limit.[8]

Construction and Application of the Statutes

Under constitutional debt limitations applying to all political subdivisions of the state, the revenue of each year must take care of expenditures of that year. Liability sought to be imposed by express or implied, executed or executory contracts in excess of current revenue in hand or legally levied is void unless authorized by vote of the

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[7] 62 Okl. St. Ann. Sec. 14.

[8] Oklahoma Constitution, Art. 10, Sec. 29.

people within limitations provided by the Constitution.[9]

The section of the Constitution referred to here is Section 26, Article 10, of the Oklahoma Constitution, which was quoted earlier. This section requires school districts and other state subdivisions to act on a cash basis, unless otherwise approved by a three-fifths majority vote of the people. The debt limitations on subdivisions of the state contained therein cannot be exceeded directly or indirectly. It is the duty of courts and municipal officers to see that the constitutional debt limitations on subdivisions of the state are enforced.[10]

Tests of Validity of Statutes

The validity of a statute dealing with school district reorganization was questioned because of the provision made in that statute for an additional charge of eight per cent to be made on transfer fees of students to help pay for the existing buildings in the receiving district. The allegation was made that this section of the statute violated the Constitution in that the people of the sending district were allegedly forced to contribute to a sinking fund obligation without the right to approve or disapprove the expenditure by vote. The court ruled

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[9]Consolidated School Dist. No. 6, Dewey County vs. Panther Oil & Grease Mfg. Co., 197 Okl. 66, 168 P. 2d 613.

[10]School Dist. No. 2, Consolidated, Pushmataha County, vs. Gossett, 140 Okl. 243, 283 P. 249.

otherwise. The charge of the eight per cent for existing buildings was judged not to be contrary to the Constitution, not did it force people to pay into a sinking fund on which they had had no opportunity to vote.[11] The court in ruling on the constitutionality of an act of the Legislature said:

> Where the constitutionality of an act of the Legislature is in question, all reasonable doubt will be resolved in favor of the questioned authority and the act will be declared constitutional unless it can be clearly demonstrated that the Legislature did not have the power or authority exercised or that its authority was exercised arbitrarily and capriciously, for instance, as to classification or delegation of authority, to the prejudice of the rights of some of the citizens. Particularly is this true where the act in question is, as here, of great public concern involving the performance of an absolute duty imposed on the Legislature by the basic law of the state.[12]

What Constitutes School District Debt

When the issue of what constitutes debt first came before the courts, there was a decided tendency towards a strict construction of the language employed, and in many of the earlier cases they held to include within the computation of debt, the liabilities and debts for ordinary current expenses of the school district. Illinois and other states still hold to this construction, but in a great

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[11] School Dist. No. 25 of Woods County vs. Hodge, 199 Okl. 81 183 P. 2d 575.

[12] _____. Ibid., p. 82.

majority of states, where such limitations exist, the converse is true. Although the current expenses of a school district for salaries of employees, court expenses, and other obligations arising in the conduct of school affairs create what is technically a debt until paid, it is not considered to be bonded indebtedness. In universal practice, these expenses are intended to be paid from cash in the treasury or from current revenue. The power of the school district to incur debts of this nature is not affected by the debt-limiting provisions of the Oklahoma Constitution.[13]

When is an indebtedness incurred? Obviously when the obligations by which the district is bound are issued and value received for them, an indebtedness is incurred. There is no indebtedness until the money is received by the district. The money is not received until the bonds are issued, approved as required by law, and delivered to the purchasers.[14] A school district incurs a bonded indebtedness within the Oklahoma Constitution when its bonds are voted, issued, approved, and delivered, and not when the election at which the bonds are submitted is held.[15]

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[13] In re Application of State to Issue Bonds to Fund Indebtedness, 33 Okl. 797, 127 P. 1065.

[14] _____. Ibid., p. 799.

[15] Mistler vs. Eye, 107 Okl. 289, 321 P. 1045.

Computation of Indebtedness

Under Section 26, Article 10, of the Oklahoma Constitution and before its being amended by referendum petition in 1955, school districts were prohibited from incurring an indebtedness in excess of five per cent of the valuation of the taxable property in the school district. The valuation of taxable property was to be ascertained from the last assessment list which formed the basis for a levy of general taxes of the county and, subsequent to the adoption of homestead exemption laws, or that assessment which excluded the amount deducted for homestead exemption.[16]

The method used to determine the amount of indebtedness which may be incurred by a school district has come to the attention of the courts on various occasions, and the courts have been virtually unanimous in their opinion as to the method that must be used. The amount of outstanding warrant indebtedness for prior fiscal years and the amount of indebtedness proposed to be incurred should be added to the amount of outstanding bonded indebtedness, and from this total should be deducted the amount of assets in the sinking fund, including cash and investments.[17] The remainder then may not exceed ten per centum of the taxable

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[16] State ex rel. Board of Education of Town of Saline vs. Williamson, 182 Okl. 97, 76 P. 2d 384.

[17] Mannsville Consolidated School Dist. No. 7., Johnston County vs. Williamson, 175 Okl. 18, 49 P. 2d 749.

value of the property in the school district.[18]

Contention has been raised as to whether interest on the bonds to be issued may be considered when determining if the issue exceeds the constitutional debt limit. The contention was that interest must be computed and added to the principal of the proposed bonds in figuring the amount of debt. The court thought otherwise and summarized its reasons in the following language:

> That such is the proper construction of Section 26, Article 10, is apparent from a reading of the section. After using the term "indebtedness" it provides for the collection of a sufficient tax annually to pay the interest on such indebtness at the date it was contracted, and interest thereon to accrue in the future was not included. Such appears to have been the meaning implied by our previous decisions. Mannsville Consolidated School Dist. No. 7 vs. Williamson, 174 Okl. 18, 49 P. 2d 749; Kansas City Southern Ry. Co. vs. Board of Education of City of Poteau, 158 Okl. 274, 13 P. 2d 115; Kirk vs. School Dist. No. 24 of Greer County, 108 Okl. 81, 234 P. 596.[19]

When determining whether a proposed school district bond issue creates a debt in excess of that authorized by the Constitution, it is evident that unaccrued interest on the proposed bonds is not to be considered as a part of the indebtedness.

How should existing bonded indebtedness be calculated in the event that certain school districts are reorganized?

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[18] Kansas City Southern Ry. Co. vs. Board of Education of City of Poteau, 158 Okl. 274, 13 P. 2d 115.

[19] Wright vs. Stapp-Zoe Consolidated School Dist. No. 1, 190 Okl. 289, 123 P. 2d 281.

The court interpretations and statutory enactments have almost completely reversed the original trend of reasoning as to the methods used in calculating indebtedness when school districts are merged. Originally the general interpretation was that an independent school district to which another school district was annexed either wholly or partly did not become liable for the bonded indebtedness of the annexed district in view of the constitutional provision against incurring obligations without a vote of the electors.[20]

Provision in 70 Okl. St. Ann. Sec. 896.3, which is a reorganization statute, states that existing bonded indebtedness of annexing districts should not apply to annexed districts until a period of three years has elapsed. This did not, at the time, unconstitutionally subject property in the annexed territory for existing indebtedness of annexing district without a vote of the people.[21]

If the indebtedness of annexed and annexing school districts is not merged, certain sections of the greater reorganized district will be bonded in a greater amount than other sections. In view of the law preventing the bonding of school districts beyond the constitutional

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[20] Protest of Missouri-Kansas-Texas Ry. Co., 181 Okl. 229, 733 P. 2d 173.

[21] School Dist. No. 25 of Woods County vs. Hodge, 199 Okl. 81, P. 2d 575.

limit, it would in effect prevent the voting of bonds in any amount that would exceed the limit of any small part of the reorganized school district. To meet this dilemma the Oklahoma Legislature enacted the following statute:

> The component parts (or part) of the district annexed, whether the annexation is or was voluntary or mandatory under the provisions of this or any prior Act, shall assume their full proportion of all legal bonded indebtedness of the district or districts to which they are or were annexed shall likewise assume a full proportion of all legal bonded indebtedness of the district annexed, or ratable proportion in ratio to assessed valuation to the part annexed.[22]

Even though this statute is seemingly in conflict with the Constitution, the Legislature saw a need to prevent a small part of any school district from attaching itself to a larger and practically debt-free school district, and thus preventing the latter from acquiring the facilities necessary for the proper education of its children. In describing the effect of the earlier statutes and court interpretations on school district building programs, the Supreme Court of Oklahoma employed the following reasoning concerning the earlier law:

> If that were the law, then, by proper timing, small parts of adjacent indebted districts could annex themselves to a large prosperous district without its consent and thus prevent it from acquiring any additional facilities. This was certainly not intended by the framers of the Constitution.[23]

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[22] 70 Okl. St. Ann. Sec. 7-3 (a).

[23] Independent School Dist. No. 1 of Custer County vs. Williamson, Okl., 262 P. 2d 201.

Similarly there are other cases pertaining to the authority possessed by the Legislature to pass laws that seem to conflict with the Constitution. The general rule is, except as limited by the Constitution, the Legislature has full power to provide by general law for the organization, consolidation, merger, change of boundaries, and dissolution of school districts, and it is not necessary that the districts affected give their consent to such action.[24] At the time of the earlier opinions there was no statute authorizing the payment, by the annexing district, of the existing debts of the annexed territory. Without statutory authority the levy of taxes therefore was ruled illegal. However, the Constitution does not prohibit the adoption of such authorizing legislation. The framers of the Constitution, by the terms of Section 26, Article 10, did not intend that a limitation be placed on the methods of establishing or altering the boundaries of school districts.[25]

In the event of annexation, determination must be made as to the liability of current debts. A school district to which another school district is annexed is liable for current debts and other obligations of the annexed school district. By its terms, this does not place indebtedness on the annexing school district in excess of income and revenue

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[24] Dowell vs. Board of Education, 185 Okl. 242, 91 P. 2d 771.

[25] Independent School Dist. No. 1 of Custer County vs. Williamson, Okl., 262 P. 2d 701.

provided for a particular year in violation of the provision of the law that requires a vote of the people.[26] This is true in view of the provision of the statute that the annexing district shall assume ownership and control of the income and revenue provided for the annexed district.[27] The statute says in part:

> In case the area affected comprises an entire school district, and all of such area is annexed to only one (1) other district the district to which it is annexed shall become the owner of all the property and other assets of the disorganized district and shall be liable for the current debts and other obligations of such disorganized district.[28]

Indebtedness in General

How should homestead exemption be treated in determining the legal limit of bonded indebtedness that may be incurred by a school district? The Attorney General of Oklahoma declined to approve an issue of bonds voted by the school district of the town of Salina, giving as his reason that the issue violated the section of the Constitution dealing with the limit to which a school district may become indebted. The school district sought a writ of mandamus to compel him to grant approval. The Attorney General

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[26] Cooperton Consolidated Dist. No. 10, Kiowa County vs. Roosevelt Consolidated Dist. No. 7, Kiowa County, 191 Okl. 47, 147 Pl 2d 447.

[27] School Dist. No. 7 of Harrah vs. Bowen, 199 Okl. 92, 183 P. 2d 251.

[28] 70 Okl. St. Ann. Art. 7, Sec. 4 (a).

interpreted the clause, dealing with the valuation of the taxable property against which taxes can be levied for general purposes, to exclude homestead exemption.[29] If this view is correct then the mandamus must be denied. It was admitted by the school district that if the net valuation (that is, the exclusion of homestead exempted property) was to be used as a yardstick the bonds were in part excessive. In the event that a part of the issue is excessive the whole proposed issue should be disapproved.[30]

In a similar case, essentially the same decision was rendered. A petition was sought to mandamus the Attorney General as Bond Commissioner to compel him to certify and approve a bond issue by a school district when the recitals showed that the issue was in excess of the constitutional limit of five per cent of the assessed valuation of the property of the school district. Unless the issue in its entirety falls within the constitutional five per cent of the taxable property of the municipality, it becomes the duty of the Attorney General to refuse to approve the issue in any amount.[31] It was concluded by the court that the only assessment which can properly be considered for tax purposes is the assessment as it exists after deducting

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[29] State ex rel. Board of Education of Town of Salina vs. Williamson, 182 Okl. 97, 76 P. 2d 384.

[30] Board of Education vs. Short, 89 Okl. 2, 213 P. 857.

[31] Board of Education of Town of Owasso vs. Short, 89 Okl. 2, 213 P. 857.

the homestead exemptions; therefore, the writ of mandamus was denied.

Bond Elections

The Board of Education of a local school district in Oklahoma has the power to call an election to be conducted in all respects as other elections for the purpose of taking the sense of the district upon the question of issuing bonds.[32] Numerous cases have been called to the attention of the courts as to the conduct of elections dealing with bond issues. What are the qualifications of voters voting in school bond elections? What are the rules in determining a voter's place of residence? How does deprivation of opportunity to vote at a school bond election influence the validity of the election?

A voter or elector qualified to vote at a school district bond election is one who possesses all the qualifications enumerated in the Constitution, and who is also a bona fide resident of the school district. The Constitution and laws of the state provide that an elector must have resided in the state at least six months, in the county two months, and the election precinct twenty days, next preceding the election at which the elector offers to vote.[33]

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[32] 70 Okl. St. Ann. Sec. 15-1.

[33] School Laws of Oklahoma, p. 20, 1965.

What are the rules determining the voter's place of residence? There is no absolute criterion by which to determine one's place of residence, for each case must depend upon its particular facts and circumstances; yet three rules seem to be reasonably established: (1) that a man must have a residence somewhere; (2) that when once established it is presumed to continue until a new one is established; and (3) that a man can have but one domicile of citizenship at a time.[34] The Constitution saves the election officials from the task of passing on the qualifications of those offering themselves to vote. If the election officials see that the constitutional requirements are met, they may feel satisfied in mind and conscience that they have fully performed their duty to their state or municipality.[35] Election officials will not be allowed to set up any criteria to determine an elector's qualifcations to vote other than those called for in the Constitution.

How does deprivation of the opportunity to vote affect the validity of an election? There are many ways in which an elector may be deprived of his legal right to vote. The Oklahoma Supreme Court has described the general pattern to be as follows:

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[34] Richardson vs. Gregg, 144 Okl. 102, 290 P. 190.

[35] Thomas vs. Reid, 142 Okl. 38, 285 Pac. 92.

> An election to be free must be without coercion of every description. An election may be held in strict accordance with every legal requirement as to form, yet, if in point of fact the voter casts the ballot as the result of intimidation; if he is deterred from the exercise of his free will by means of any influence whatever, although there be neither violence nor physical coercion, it is not a free and equal election within the spirit of the Constitution. The Constitution guarantees a "free and equal election," which means "no impediment or restraint of any character shall be imposed upon him either directly or indirectly, whereby he shall be hindered or prevented from participation at the polls.[36]

In determining whether a bond issue has received the assent of the required number of voters as required by law, neither blank ballots, nor ballots marked both for and against the bond issue, nor ballots returned as mutilated because of not voting either for or against the bond issue (but cast for another proposition submitted at the same time on a separate ballot) can be counted in determining the aggregate number of votes cast in an election. The reason for eliminating these ballots is that none of the persons casting them expressed any will, preference, or choice in regard to the measures voted upon.[37] Generally a school district election will be declared void where qualified electors are fraudulently deprived of the opportunity to vote in sufficient number to have changed the result of the election, had their votes been counted for the losing side. The converse is true, however, if the

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[36] Ex parte Wilson, 7 Okl. 610, 125 Pac. 739.

[37] Board of Education of Oklahoma City vs. Woodworth, 89 Okl. 192, 214 P. 1077.

number was not sufficient to have changed the result of the election.[38]

In an election called for the voting of school district bonds, what are the legal rights and responsibilities of the Board of Education? Shortly after Oklahoma had gained statehood, it was the duty of the Mayor of the city composing all or part of the school district issuing the bonds to call the election. The Mayor was then clothed with ministerial duties, and it was his duty, upon a request from the Board of Education, to call the election as provided in the statutes.[39] In the event the Mayor might refuse to call an election for the purpose of voting on a given bond issue after being properly notified by the Board of Education, he could be mandamused to do so.[40] The present laws leave the conduction of school elections entirely in the hands of the local board so long as there is substantial compliance with the statutes. The statutes read in part:

> The Board of Education shall call an election, to be conducted in all respects as other elections ..... Boards of Education are hereby declared to be free and independent of cities in all matters relating to school elections legally called upon all school matters.[41]

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[38] Richardson vs. Gregg, 144 Okl. 102, 290 P. 190.

[39] Cook vs. Board of Education of Independent School Dist. No. 15 of Atoka County, 61 Okl. 152, 160 P. 1124.

[40] _____. Ibid., p. 153.

[41] 70 O. S. 1961, Art. 15, Sec. 2.

An opinion was asked of the Attorney General as to the legality of the Board of Education setting the polling places in the different grade schools in the city of Ardmore. In that ruling it was affirmed that the Board of Education of a school district could fix the place and number of polling places in a school district election called for the purpose of voting upon the issuance of school district bonds. The Board of Education could also divide the school district into definite geographical areas, and provide that school district electors living within each of said areas shall vote at the polling place designated by the board.[42]

The legality of an election for the issuance of school bonds was questioned on the grounds that forty-one women were permitted to vote. It was contended that this was illegal. The court ruled that while it was illegal (which it was at that time) it did not invalidate the election as the result would not have been changed had the irregularity not occurred.[43] Qualified electors, as defined by the Constitution of Oklahoma, are male and not female citizens. The evidence disclosed that forty-one women, who were not entitled to vote, actually voted in the said election. It

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[42]Opinion of the Attorney General of Oklahoma, December 27, 1949. Addressed to Honorable Oliver Hodge, State Superintendent of Public Instruction, (in the files of the office of the Attorney General).

[43]Shelton vs. School Board, 43 Okl. 239, 142 P. 1034.

was urged that because this number of disqualified voters were allowed to participate in the election, the entire poll should be rejected and the election held invalid. It was held by the court that this was not the law.[44] The general rule throughout most of the states of the Union is that an election is not to be held invalid except as a last resort. The courts have the power to reject an entire poll, but only in the extremest case—as where it is impossible to ascertain the true vote. The question of impossibility seems to be the determining factor.

Funding and Refunding Bonds

The power of a local Board of Education to refund debt obligations, whether to consolidate various obligations for better debt administration, to replace callable bonds with refunding bonds at a more favorable interest rate, or to effect an extension of the term of the debt, is derived from the statutes of the state and must be exercised as the statute provides. Refunding bonds are not usually regarded as increasing a district's indebtedness—the bonds simply change the form of pre-existing indebtedness. In all instances refunding bonds may be used to replace only valid debt obligations. The court used the following language in ruling on the effect refunding bonds have on

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[44] Martin vs. McGarr, 27 Okl. 653, 117 Pac. 323, 38 L.R.A. (N.S.) 1007.

indebtedness of a school district.

> Funding bonds are issued concurrently with the cancellation of warrants of the municipality, and a municipality does not by their issuance, become further indebted provided the warrants themselves represent a valid indebtedness. No new debt is incurred by mere change in the form of the existing debt.[45]

Since no new debt is incurred by the issuance of refunding bonds, school boards are often given authority to issue them with their own discretion and upon their own initiative without the formal requirements of hearings, elections, and other procedures necessary for the issuance of general obligation bonds. A school district in Oklahoma may refund any part or all of its bonded and judgment indebtedness and the interest thereon, by agreement with the holders of this indebtedness.[46] In order to refund these bonds, they must be authorized, executed, registered, and approved in the same manner as bonds issued under the statutes in force, excepting the need to call an election. Most states do not demand such a rigid requirement. Bonds may be refunded only if they mature other than serially and when they are issued shall not bear a higher rate of interest than the indebtedness which is funded or refunded.[47] When the decision has been made to refund a debt, the

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[45] State ex rel. Board of Education of Oklahoma City vs. West, 29 Okl. 503, 118 Pac. 149.

[46] 62 O. S. 1961, Sec. 426 (a).

[47] 62 O. S. 1931, Sec. 5929.

pre-existing indebtedness must be determined. In determining whether existing indebtedness is valid each item must be analyzed and must stand or fall by itself. The last indebtedness incurred may be valid and other and prior indebtedness may be invalid. The fact that the total existing indebtedness is excessive is not the determining factor as to the validity of any particular indebtedness.[48] The validity of indebtedness of a political subdivision of the state is dependent upon one of four things. Did it, at the time it was incurred, with the other indebtedness incurred during the fiscal year, exceed the income and revenue provided for that purpose for that fiscal year? Did it have, at the time it was incurred, the assent of the requisite percentage of voters? Was it within the limitation provided? Was it incurred under the circumstances stated in the case of Smartt, Sherriff, vs. Board of County Commissioners of Craig County, 67 Okl. 141, 169 Pac. 1101? In this case a sheriff was required by law to feed a number of prisoners in the county jail with his own funds. When he filed claims with the County Commissioners to seek reimbursement for these meals the Commissioners refused to pay the claims on the grounds that this was an indebtedness beyond the cash available to honor the claims. The court allowed a judgment against the county in favor of the sheriff even though the county became indebted beyond the

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[48] Faught vs. City of Sapulpa, 145 Okl. 164, 292 P. 15.

lawful limit. The court reasoned as follows:

> An officer compelled to perform at his peril certain duties which involve the expenditure of his private funds and subject to imprisonment for failure to do so is penalized by being denied compensation therefore ..... to bring about this result is to construe the Constitution in such a way as to place it in the power of one set of officials to deprive another of the means necessary for the performance of the duties imposed upon that other.[49]

If the indebtedness does not come within one of the afore mentioned classes, it is void.[50]

Judgment

What are the legal implications when a judgment is rendered against a subdivision of the state and the bond issue ordered for the payment of this judgment exceeds the constitutional debt limit? If a political subdivision of the state is sued in a court of competent jurisdiction and the court renders a judgment against the subdivision, that judgment is binding and conclusive upon the political subdivision and upon the taxpayers unless set aside or vacated in a proper proceeding.[51] In a similar case on the same point, ordering a bond issue to fund a judgment on city warrants was held not to be in error because the city had

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[49] Smartt, Sheriff vs. Board of County Commissioners of Craig County, 67 Okl. 141, 169 Pac. 1101.

[50] Faught vs. City of Sapulpa, 145 Okl. 164, 292 P. 15.

[51] _____. Ibid., p. 165.

already exceeded the constitutional debt limit, providing the warrants were issued against valid appropriations and were within these appropriations.[52] This same point of law was appealed from the Supreme Court of Oklahoma to the Federal Courts. The Federal Court accepted jurisdiction and ruled that bonds issued by a school district to fund a judgment were a valid indebtedness even though the total indebtedness exceeded the constitutional limitation.[53] Then any school district is authorized and empowered to issue its general obligation bonds for the purpose of funding any or all of its matured and outstanding special assessment obligations, and the interest and/or penalities.[54] If any of the purchase money derived from the sale of bonds is left in the hands of the treasurer after the payments of these special assessments, interest, or penalities, it must be credited to the sinking fund created for the payment of these bonds.[55] This, of course, is not to be construed to authorize the issuance of bonds in an aggregate for an amount greater than the total amount needed to retire the bonds.

Would it be possible to obtain a judgment against a

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[52] Kansas City Southern Ry. Co. vs. City of Heavener, 175 Okl. 517, 54 P. 2d 165.

[53] Board of Education of Town of Carmen, Okla. vs. James, C.C.A., 49 F. 2d 91.

[54] 62 O. S. 1961, Sec. 411.

[55] _____. Ibid., p. 833.

school district to pay for a portion of the cost of public improvements, such as a paving district? In the event that a judgment was obtained, but the tax was not levied, could the county excise board be mandamused to levy a tax to pay this judgment? In view of the following statute that deals with the liability of school districts as to the assessment of their property for public improvements, the answer would seem obvious. The statute says in part that any property owned by the city, town, or county or any Board of Education or school district, shall be treated and considered as the property of other owners.[56]

The Legislature has provided the amount that should be paid on public property for public improvement, and the manner in which it must be paid. In the two cases that have reached the Oklahoma State Supreme Court concerning this particular point of law, the ruling has been identical in both instances. It was held that public property may be held liable for the proportionate amount that is assessable to the property and for any additional interest that may have accrued against the property.[57] No penalities may be directed toward public property when there has been a delay in payment by some political subdivision for public improvements as might be possible if the

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[56] 11 O. S. 1961, Sec. 100

[57] Board of Education of City of Chickasha et al. vs. City of Chickasha ex rel. Pool. 195 Okl. 127, 155 P. 2d 723.

property were private. The section of the statutes that relates to delinquencies and penalities was not intended to apply to municipalities.[58] The obligation of a school district to pay paving assessments is one imposed by law under the Constitution and does not come within the debt limitations set out in the Constitution.

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[58] Wilson vs. City of Hollis, 193 Okl. 241, 142 P. 2d.

CHAPTER V

INVESTMENT OF CAPITAL FUNDS

Earnings on temporarily idle funds can amount to several thousand dollars a year. "Investing idle school funds is one of the simplest and best ways to earn extra money, yet one of the most overlooked, in school business management," says Dr. Forrest Harrison, an Office of Education specialist in school finance. By invest, we mean the purchase of short term securities, such as U.S. Treasury bills, or simply putting the money in a savings account.

Seldom is there a steady flow of income and expenditure in a school district. There are usually "peaks" of income, as when taxes are collected, and there are often peaks of expenditures, too. When these peaks do not coincide, and cash is idle in an operating fund or checking account, this is the time to put it to work.

The principle of investing funds is so simple, that in most circumstances it is not necessary to ask for the advice of an investment consultant. Since state laws prohibit "gambling" with public funds, administrators and school boards should understand how the applicable laws of their particular state apply before putting such funds to work. Statutes in forty-four states are generally clear

and precise in their enumeration of the features that control the sources of money that may be invested, the nature of the investments that may be made, the length of time that money may be invested, and the conversion features required.[1]

Information that the average district will need before investing its money is (1) where the best interest rates are to be obtained, (2) what types of investments are legally permitted, and (3) where the money can be accepted for the proper length of time. Information concerning interest rates is available from chief bank officers, and this is the first place an inquiring school administrator or business manager should go. Banks deal in government securities all the time, so they are able to obtain them with a minimum of red tape. The bank, in effect, becomes the broker and usually without the regular brokerage fees. The only completely safe, interest-bearing investment which many states permit their schools to make is in U.S. Treasury notes and in bank savings accounts. Local school boards in forty of the forty-four states that permit the investment of idle funds may invest in obligations of the the United States of America.[2]

In reference to the investment of idle funds in

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[1]Lee O. Garber and Donald S. Felker, "Where and How Schools Should Invest," Nation's Schools, August, 1965, p. 44.

[2]_____. Ibid., p. 45.

obligations of the United States Government, the Oklahoma Statutes reads in part:

> The lawful treasurer of any city, town or school district, as the case may be when authorized by the appropriate governing body, is hereby authorized to invest any funds in the custody of the treasurer in direct obligations of the United States Government to the payment of which the faith and credit of the government of the United States is pledged.[3]

Oklahoma, then, while allowing any idle funds to be invested in obligations of the United States Government, takes a different view as to placing school district money in bank savings accounts. The Attorney General of Oklahoma took under consideration whether a school district treasurer could lawfully collect interest on school district funds that are deposited in a bank. He expressed the view that school district funds cannot lawfully be invested in certificates of deposit issued by a bank.[4] This did not, however, apply to funds deposited in a bank on a demand basis, that is, when such funds can be withdrawn from the bank at any time. The Attorney General explained more explicitly in a later opinion that a school district treasurer can lawfully collect interest on school district funds that are deposited in a bank, if the amounts deposited

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[3] 62 Okl. St. Ann. Sec. 348.1.

[4] Opinion of the Attorney General of Oklahoma, February 6, 1959, Addressed to Honorable Oliver Hodge, State Superintendent of Public Instruction, (in the files of the office of the Attorney General).

are payable by the bank on demand.[5]

In order to invest any funds the Board of Education of the school district must determine by resolution that funds purposed for investment will not be needed for a specified length of time, and they cannot then be expended until the time has lapsed. A sample of a proper resolution is as follows:

> WHEREAS, Independent School District No. __, of _____County, Oklahoma, through its Treasurer, _____, has previously invested some of its funds in United States Treasury Bills, and WHEREAS, said Board of Education of said Independent School District No. __, now finds and determines that said funds in the amount of $_____ will not be needed for the purposes originally budgeted for another _____ days and may safely be invested in obligations of the United States Government.
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> NOW, THEREFORE, the Board of Education of Independent School District No. __, _____ County, Oklahoma, in regular meeting assembled this _____ day of _____, 19__, does hereby authorize and direct its treasurer, _____ to invest the sum of $_____ of its _____ funds in this same type of security, to-wit, United States Treasury Bills, which will mature in _____ days from this date, and said Board of Education further directs said Treasurer to place all income received from said invested funds in the proper fund of Independent School District No. __ of _____ County, Oklahoma, beginning with the fiscal year July 1, ____ through June 30, ____.

ATTEST:

_____
Clerk of said Board
(Seal)

_____
President, Board of Educ.
of Independent School
Dist. No. __, _____
County, Oklahoma

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[5]Opinion of the Attorney General of Oklahoma, April 17, 1961, Addressed to Honorable Oliver Hodge, State Superintendent of Public Instruction, (in the files of the office of the Attorney General).

When the legal treasurer of a municipality or school district invests sinking funds in his custody without authorization from the appropriate governing board, what are the legal implications? It was contended in one case that reached the Federal Courts that under the Oklahoma Statutes enacted in 1923, the County Treasurer had authority to invest the sinking funds of townships and of school districts without approval of a proper governing board. The governing board named in the statutes was the Board of County Commissioners. It was alleged that under long standing administrative practice, prior approval to invest the sinking funds was not required. The administrative practice of not requiring investment approval came into being by following the opinions of the Attorney General. The Attorney General had given four opinions addressed to County Attorneys of the state that approval was not required. On the strength of these opinions, a treasurer of Woods County invested funds without authorization. It was argued that a public official in Oklahoma is obliged to follow the opinions of the Attorney General in making the investments without approval; and therefore he should be absolved from liability.[6] Whatever the rule may be elsewhere, it may be conceded that under the law in Oklahoma, when well-founded doubt or uncertainty exists

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[6] Standard Surety & Casualty Co. of New York vs. State of Oklahoma ex rel. Thilsted, C.C.A., 145 F. 2d 605.

concerning the construction to be placed upon a statute, it is the duty of public officials such as the County Treasurer to follow the advice of the Attorney General.[7] Evidently this rule has application only where well-founded doubt or ambiguity exists. Public officials are governed in their action by existing statutes and constitutional provisions, including the judicial construction placed upon them by the highest court of the state.[8] When the statutes and constitutional provisions are clear, it then seems apparent that the opinion of the Attorney General is of no effect. Long after the investments in question had been made, the proper officers purported to approve them. It is a general principle of law that a county, through its proper officers, may ratify and make effective an unauthorized contract, provided the contract is one which the county could have made in the first instance.[9] But here the County Commissioners and the County Attorney were not authorized to invest the sinking funds. They merely had authority to approve the investment of the funds by the County Treasurer. The treasurer was the officer authorized by law to invest the funds. Still, he could invest them only with the approval of the County

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[7] Rasure vs. Sparks, 75 Okl. 181, 183 P. 495.

[8] State vs. Board of Education of Oklahoma City, 186 Okl. 665, 99 P. 2d 879.

[9] Ryan vs. Humphries, 50 Okl. 143, 150 P. 1106, L.R.A. 1916 F. 1047.

Commissioners and the County Attorney. The statute expressedly forbade their investment without approval. The action of the County Commissioners and the County Attorney in adopting the resolution authorizing the investment of certain funds after they had already been invested, amounted to nothing more than approval of investments already made in violation of the law.[10] Approval at this later date cannot constitute ratification of the acts of the County Treasurer which transcended the forbidding provisions of a controlling statute.[11]

Disposition of Investment Earnings

When a County Treasurer invests funds in his custody which belong to several different political subdivisions of the state government, such as school districts, counties, and municipalities, how should the interest earned from the investment be credited? In an Oklahoma Supreme Court case on this point certain school districts in Okmulgee County sought mandamus against the County Treasurer to force him to deposit earnings from investments he had made with county sinking funds to the various school districts' accounts. The school districts maintained that the earnings from the investments should be prorated on the

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[10] Standard Surety & Casualty Co. of New York vs. State of Oklahoma ex rel. Thilsted, C.C.A., 145 F. 2d 605.

[11] _____. Ibid., p. 609.

basis of the amount of their individual sinking funds which were invested in relation to the total investment. The school districts stipulated that each year the treasurer had invested the county sinking fund in interest-bearing securities, and had not apportioned any of the funds received as interest on investments of the county sinking fund to the school districts' accounts. The school districts based their allegations on the following Oklahoma Statute:

> The county treasurer shall, ... appropriate and place to the credit of the sinking fund account of the various school districts of the county, all interest collected from the investment of their sinking funds, as provided ..... and all interest loaned and collected upon such sinking fund from every source whatsoever; provided, that the amount so credited to the sinking fund account of each district, shall bear the same ratio to the whole amount of interest so collected, as the amount to the credit of the sinking fund account of such district bears to the whole amount to the sinking fund account of all the school districts of the county. The county treasurer shall, on the 30th day of June each year, appropriate and place to the credit of the sinking fund account of the various school districts of the county, all interest collected from the investment of their sinking funds.[12]

The statute quoted in the preceding paragraph constituted a legislative construction of a prior statute. There seemed to be some ambiguity in the earlier statute. The word their was left out of the original statute and because of this ambiguity the Attorney General informed the court

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[12] 62 O. S. 1923, Sec. 541.

through his brief that the original act had received an administrative construction through certain opinions furnished to various officials by the Attorney General. The construction was to the general effect that the earnings from investments of the various sinking funds should be apportioned to the credit of the fund earning the same, and that the various officials had followed the practice and custom outlined in said administrative construction from the time of the passage of the original act. While administrative construction of a statute is not binding upon the court, they recognized that it was entitled to weight and consideration.[13] A change of established practices and customs results in confusion and disorder and is not to the best interests of the various municipalities affected. A change in administrative practice would be especially confusing in this case because the administrative construction of the act is supported by what the court deemed to be the actual intent of the legislature.[14]

It is the duty of the court to ascertain, if possible, the legislative intent and to give full effect to such intent.[15] It is well known that the legislature has full authority to repeal or amend any existing statute or enact

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[13] Roberts vs. Board of Education of City of Okmulgee, 168 Okl. 414, 33 P. 2d 496.

[14] _____. Ibid., p. 416.

[15] Haskell vs. Edmonds, 90 Okl. 44, 215 P. 629; Brown vs. Miller, 89 Okl. 287, 215 P. 748.

any new statute, acting at all times within constitutional limitations, but the only way in which it may clarify a statute is by writing its meaning in clear language. In the final analysis, where ambiguity exists in a statute, the administrative construction that has been given it will stand. A subsequent legislature has no authority to construe an existing statute enacted by a previous legislature and make such construction binding upon the judiciary.[16] In this event the earnings from investments of the various sinking funds should be apportioned to the credit of the fund earning the same.[17]

Investments: Effect on Contracts

When a building contract is let, must money for the complete contract be on hand at all times or only as it is payable? Concerning this matter the Oklahoma Statutes read as follows:

> It shall be unlawful for the board of any school district ..... to make any contract for ..... or authorize it to be done by others, in excess of the estimate made and approved by the excise board for such purpose for such current fiscal year, or in excess of the specific amount authorized for such purpose by a bond issue.[18]

It is noted that a contract cannot be made for an

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[16] Haskell vs. Edmonds, 90 Okl. 44, 215 P. 629.

[17] Roberts vs. Board of Education of City of Okmulgee, 168 Okl. 414, 33 P. 2d 496.

[18] 62 O. S. 1961, Sec. 479.

amount "in excess of the estimate made and approved by the excise board for such purpose for such current fiscal year, or in excess of the specific amount authorized for such purpose by a bond issue." The Attorney General of Oklahoma is of the opinion that these provisions require a school district to have available, at the time a contract is made, the amount payable under such contract, which, however, does not necessarily mean that the same must be in cash.[19] It is believed that the same might be in the form of a United States Treasury Bill, if collectible by the time the amount payable to the contractor becomes due.[20] Other statutory provisions are also made which seem to clarify the matter somewhat. It reads as follows:

> The proceeds of any school bonds or any portion thereof, or the sinking fund for the payment of any school bonds, may be invested by the issuing board in any type of series of United States Government bonds.[21]

Proceeds of school district bonds may be invested in United States Government Bonds, under the above quoted provisions, so long as the proceeds are made available when required by the contract. No distinction is made between money which has already been obligated and money which has

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[19] Opinion of the Attorney General of Oklahoma, February 27, 1957, Addressed to Honorable Oliver Hodge, State Superintendent of Public Instruction, (in the files of the office of the Attorney General).

[20] _____. Ibid., p. 2.

[21] 70 O. S. 1961, Art. 15, Sec. 15.

not. It is assumed that the government bonds to be purchased will mature, or can be liquidated, before payment of the invested funds is required or applied upon the contract or contracts for which they had been obligated or pledged. As provided by statute, the Board of Education of a school district may invest funds received from the sale of building bonds during the period of time after contracts are made obligating such funds, and until such funds are actually needed for payment on architectural and building contract obligations.[22]

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[22]Opinion of the Attorney General of Oklahoma, February 14, 1957, Addressed to Honorable Oliver Hodge, State Superintendent of Public Instruction, (in the files of the office of the Attorney General).

CHAPTER VI

SUMMARY AND RECOMMENDATIONS

The study of capital fund management has been one largely of legal and historical research. A number of legal questions confronting school executives and lay school board members as they have endeavored to acquire or dispose of school property, vote bonds and building funds, and invest these funds in capital improvements have been considered. Some consideration was also given to the investment of temporarily idle funds until the need should arise for their expenditure. An attempt has been made to find some practicable legal standards and, if possible, point out the conditions and situations under which such standards or rules will be applied. Obviously, this study has not been concerned with making experiments, nor with philosophical discussion and speculation as to the origin of the law. It rather considers the results of past experiences as reported in the court decisions, with the view of deducing those principles and rules and pointing out the practicable conditions and situations under which the courts will apply them. In the situations that arise in the management of capital funds, it is important to determine the rules, standards, and principles which the courts

will apply and enforce.

In most states the statutes specifically empower school officials to acquire property deemed necessary for maintaining public schools. When school property is no longer needed for school use, the Board of Education generally has the same power in dispensing with this property. Where such specific authority exists, strict compliance with the statute is usually required before valid action can be taken in acquiring and dispensing with property. Where no specific statute empowers public school officials to acquire land, buildings, or other property needed for maintaining schools, the courts permit them to acquire the necessary property under their general authority and responsibility to maintain public schools.

When a statute merely provides for the construction of suitable school buildings, there is implied authority to secure necessary sites and play space. Such provision has also been interpreted as empowering school officials to erect a gymnasium or a heating plant which is separate from other school buildings, to acquire land for an athletic field which is not contiguous to the main school site, or to construct a stadium for holding athletic contests and recreational activities. Courts differ in regard to whether such general power is sufficient to permit the construction of living quarters for teachers, but it is permissible in Oklahoma.

The purchase of sites and construction of buildings is

not the only method by which school officials may come into possession of property for school purposes. Under certain conditions they may lease needed facilities. Considerable discretion is allowed school officials regarding the type of premises which may be rented, so long as they are reasonably well adapted to school purposes. It has been held that where a district erects a building on land procured through a long-term lease, the district may remove the building when the premises cease to be used for school purposes.

Occasionally a district may receive property by annexation. When an entire district is annexed, all property, buildings, and equipment become the property of the district to which the real property is annexed. The receiving district must also accept all debts and obligations of the annexed district. In the event that a school district is dissolved and divided between two or more districts, each will share in the district's obligations in proportion to the amount of the assessed valuation obtained. The division of property other than real property must be by agreement of the Boards of Education of the districts receiving property. If they are unable to agree, the property will be divided by the State Board of Education, and its decision is final.

School districts are on essentially the same basis as individuals in securing property by adverse possession. To secure title in this way, the school district must show

that it has held the property in a way that is inconsistent with and adverse to a holding and use by the other party. Courts view with disfavor, claims by parties who have allowed title to property to be unquestioned long enough to indicate their acquiescence. The intention here is not to punish the one who neglects to assert his rights, but to protect those who have maintained the possession of land for the time specified by the statute under claim of right or color of title.

The use of land for school purposes is considered a public use, which warrants procurement by eminent domain proceedings—if it appears that a particular parcel of land is essential, and that it cannot be secured by some other procedure. Condemnation is considered an extreme measure in securing land for school use; therefore, the extent of the estate is strictly limited by the public need. Usually when land is taken by eminent domain, the title remains with the original owner and will revert to him when the property is no longer needed for school use.

In some instances school property will revert to the original owner when it is no longer needed or used for school purposes. For reversion to take place it must clearly be incorporated in the deed. Courts, generally, do not favor clauses for reversion because such clauses tend to destroy estates. Since the deed is the act of the grantor, any decision is usually construed strongly against him.

Two major plans were discussed for the financing of building programs, the pay-as-you-go-plan and the bonding plan. With the pay-as-you-go-plan, the school district makes an effort to levy enough money by direct taxes each year to finance the building program. This plan in the State of Oklahoma is known as the constitutional building fund. However, it is not adequate in providing for school facilities except in a very few instances. It provides that a total of five mills may be voted upon each year for the erection of school buildings, for remodel or repair of school buildings, or purchase of furniture. The chief arguments in favor of this plan are (1) that interest is saved in comparison with the bonding plan, and (2) that future building programs are not handicapped by a bonded debt.

Under the bonding plan the district issues bonds for a period of years. These bonds are written agreements by the district to pay specified portions of the principal and accumulated interest on stated dates. The bonding plan is the usual method of financing building programs. Major emphasis was given to the legal limitations which states have placed upon the power of a school district to issue bonds and upon the district's power to tax for the purpose of paying the interest and principal of each bond issue. Major treatment was given to the bonding laws of the State of Oklahoma.

Most states permit the investment of idle school funds in some type of securities. Since laws prohibit school boards from "gambling" with these funds, the law strictly regulates the types of investment that may be made. The most common investments allowed are securities backed by the full faith and credit of the United States Government. Some states allow investment of idle funds in bank saving accounts, but in Oklahoma this is not permitted. The only investments authorized for Oklahoma school districts are United States Government securities and warrants of the school district's own registration.

Since public education is a state function, it seems only natural that the state has some responsibility for financing capital outlay programs for the local schools. A number of states have made provisions for financing capital outlay programs, but thus far the Oklahoma Legislature has not deemed it expedient to do so, except on a very limited scale. Some states are making grants while others are using some type of an equalization plan. It is recommended that the Oklahoma State Legislature give some consideration to passing appropriate laws that will make adequate provisions for capital outlay within state school budgets. When drafting this legislation, consideration should be given to the following:

1. State programs for financing school facilities should be scientifically developed.
2. Provisions should be made in the law for some

state grants, as well as for loans.

3. The state should provide for both emergency and long-range needs.

4. State programs for financing school facilities should be administered by the State Department of Education.

5. The formula for this support should be written into the statutes, and should provide for an equitable tax effort from both local and state levels.

6. Maximum emphasis should be placed on local responsibility and state leadership.

7. Comprehensive school plant studies should be required.

8. Each school should be required to develop and adopt a long-range plan. The long-range plan would require that school sites be acquired in advance of actual need, should save money, and provide for more desirable school sites.

The debt limitation in most states is expressed in terms of a percentage of the assessed valuation. Sometimes this can hamper needed building programs because of low assessments, poor assessment practices, and unequal assessments of taxable property. Since this situation does exist in Oklahoma, the following recommendations are made:

1. Rather than securing laws which are really evasions of the constitutional limitations, efforts to amend constitutional provisions which handicap the

development of school programs should be made.

2. The debt limitation which is expressed in terms of percentage of the assessed valuation might be changed to a percentage of the real valuation.

3. Provision in the law should be made so that debt may be paid off more rapidly during a period of high prices to help prevent the necessity for paying it in appreciated money at a later period of low prices.

4. Twenty-five years is the maximum limitation placed on the maturity of bonds in Oklahoma. Some consideration should be given to shortening this maximum limitation on length of maturity. Shortening the length of maturity on bonds might give some relief on the high cost of interest in financing capital improvement programs for the public schools.

5. The only investments of school funds that are permissible in Oklahoma are warrants of the local school's registration and investments that have the full faith and credit of the United States. It is recommended that laws be passed making it permissible for school districts to invest their idle funds in bank saving accounts and bonds backed by the full faith and credit of the State of Oklahoma.

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TABLE OF TERMS

Action. A proceeding in court by which one party complains against another for the enforcement or protection of a right, the redress of a wrong, or the punishment of a public offense.

Allegation. Statement in pleadings, setting forth what the party expects to prove.

Allege. To state, assert, or charge; to make an allegation.

Annotation. Notes or commentaries in addition to the principal text. A book is said to be annotated when it contains such notes.

Arbitrary. Not supported by fair cause and without reason given.

Citation. A reference to decided cases or books of authority.

Civil action. One brought to recover some civil right, or to obtain redress for some wrong.

Code. A compilation of statutes, scientifically arranged into chapters, subheadings, and sections, with a table of contents and index.

Constitution. The supreme organic and fundamental law of a nation or state, establishing the character and conception of its government, laying the basic principles to which its internal life is to be conformed, organizing the government, and regulating, distributing, and limiting the functions of its different departments, and prescribing the extent and manner of the exercise of sovereign powers.

Contract. An agreement upon sufficient consideration, to do or not to do a particular thing; the writing which contains the agreement of the parties, with the terms and conditions, and which serves as proof of the obligation.

Decision. The conclusion of the court as to the merits of the claims of the contending parties.

Defendant. The party against whom relief or recovery is sought in a court action.

Due process. The exercise of the powers of government in such a way as to protect individual rights.

Ex rel. Abbreviation for ex relatione, meaning on relation or information. For the purpose of this text, it need be explained only as designating a type of court action.

Governmental Functions. Activities of the governmental unit when it is acting as an agent of the state.

Judgment. Decision of the court, usually that part involving the payment of damages.

Judgment-proof. Said of those against whom a judgment has been rendered even though they are not in financial condition to pay it.

Law. (1) System of principles or rules of human conduct. In this sense it includes decisions of courts as well as acts of legislatures. (2) An enactment of a legislature, a statute.

Plaintiff. The person who brings action or suit to obtain a remedy for injury to his rights.

Plenary. Complete power, usually applied to legislatures over matters within their entire jurisdiction; applicable also to any public officer who has unqualified power in a designated matter.

Police power. As used in this text, legislative power to enact laws for the comfort, health, and prosperity of the state; for the general welfare of the people concerned.

Precedent. A decision of the courts which serves as a rule for future determinations in similar cases.

Proprietary Functions. Activities of the governmental unit when it is acting in its private or corporate capacity and in the interests of the local area as contrasted to acting in the interests of the state.

Quasi-corporation. An organization with semi-corporate powers; it is created by the state with limited powers to act in the place of the state for a given local area.

Stare Decisis. Principle that when a court has made a declaration of a legal principle it is the law until changed by competent authority. The literal meaning is to stand by precedent set in previous cases.

State Agencies. Organizations or quasi-corporation created by the state to perform a limited governmental purpose.

Statute. Act passed by the legislature.

Validity. Legal sufficiency in contradistinction to mere regularity.

Void. Ineffectual, having no legal force or binding effect; said of a contract so defective that nothing can cure it.

Writ of Mandamus. A court compelling public bodies or officers to perform a duty.

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