



WILLIAM J. SCOTT
ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD

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FILE NO. S-1115

**SCHOOLS AND SCHOOL DISTRICTS:
Power of a School District
to Levy a Supplemental Tax**

Honorable Paul L. Stone
State's Attorney
Moultrie County
Sullivan, Illinois 61951

Dear Mr. Stone:

This responds to your letter requesting my opinion as to whether school districts have the authority to levy a supplemental tax to cover prior deficiencies in a levy for principal and interest due on certain school bonds. As you point out, my predecessor in his Opinion No. 757 (1962 Ill. Att'y. Gen. Op. No. 548) advised that such a supplemental tax was authorized. You note further, however, that his

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decision was based on that portion of section 12 of article IX of the Illinois Constitution of 1870 which stated that:

" * * * Any county, city, school district, or other municipal corporation, incurring any indebtedness as aforesaid, shall before, or at the time of doing so, provide for the collection of a direct annual tax sufficient to pay the interest on such debt as it falls due, and also to pay and discharge the principal thereof within twenty years from the time of contracting the same.

* * *

Since this language was not carried over in the present constitution, you ask if such a supplemental levy is still valid. In my opinion it is.

It is my understanding based on a phone conversation with your office that the bonds in question were issued for the purpose of building and altering school buildings. The authority to issue bonds for this purpose is found in section 19-3 of The School Code (Ill. Rev. Stat. 1975, ch. 122, par. 19-3) which provides in pertinent part:

"Any school district governed by a board of education and having a population of not more than 500,000 inhabitants, and not governed by a special Act may borrow money for the purpose of building, equipping, altering or repairing school buildings, * * * and issue its negotiable coupon bonds therefor

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signed by the president and secretary of the board, in denominations of not less than \$100 nor more than \$5,000, payable at such place and at such time or times, not exceeding 20 years from date of issuance, as the board of education may prescribe, and bearing interest at a rate not to exceed 7% per annum, payable annually, semiannually or quarterly, * * *."

Section 19-7 of The School Code (Ill. Rev. Stat. 1975, ch. 122, par. 19-7) also deals with bonds issued for building purposes and it provides that:

"Whenever any school district having a population of less than 500,000 inhabitants is authorized to issue bonds, the recording officer thereof shall file in the office of the county clerk of each county in which any portion of the district is situated a certified copy of the resolution providing for their issuance and levying a tax to pay them. The county clerk shall prepare and keep in his office a registry of all such bonds which shall show the name of the issuing body and the date, amount, purpose, rate of interest and maturity of the bonds to be issued, and the county clerk, subject to the provisions of Section 7-14 of this Act, annually shall extend taxes against all the taxable property situated in the county and contained in the district in amounts sufficient to pay maturing principal and interest, and such taxes shall be computed, extended and collected in the same manner as is now or may hereafter be provided for the computation, extension and collection of taxes for general corporate purposes for the issuing district. If no such certified copy of resolution has been filed with reference to any bonds heretofore authorized one shall promptly be filed."

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Reading these two provisions together it is evident that the legislative intent here is to require by statute that which was formerly required by the 1870 Constitution. When a school district issues bonds pursuant to section 19-3 it must also levy a tax sufficient to pay maturing principal and interest.

It is apparent therefore that a school district has the same obligation today under The School Code with regard to bonds issued for building purposes that it had under section 12 of article IX of the former constitution. In discussing this obligation under the 1870 Constitution, the Supreme Court in Gates v. Sweitzer, 347 Ill. 353, at 359, stated that:

" * * * [T]his provision of the constitution contemplates not only the levy of taxes sufficient to meet the interest and principal payment on bonds but likewise requires the collection of taxes in such amounts. * * * "

Similarly, in People v. New York, Chicago and St. Louis R.R. Co., 323 Ill. 493, at 497-498 the court found that this provision "imposes a duty to levy the necessary tax which continues while the debt exists".

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It was this obligation to levy taxes sufficient to cover interest and principal owed on bonds issued that was the basis of my predecessor's opinion. In my opinion The School Code continues to impose this obligation on school districts and therefore my predecessor's conclusion continues to be valid and a school district may levy a supplemental tax in the situation you describe.

Very truly yours,

A T T O R N E Y G E N E R A L