

**OPINION
68-184**

February 7, 1968 (OPINION)

Mr. H. J. Snortland

Assistant Superintendent

Public Instruction

RE: Schools - Certificates of Indebtedness - Retirements by County 0

This is in reply to your letter of February 1, 1968, relative to certificates of indebtedness issued by a school district. You state the following facts:

"A school district has a population of over 4,000 and sells certificates of indebtedness against its uncollected taxes. The lender has the certificates registered with the county auditor. The county treasurer, however, does not retain the tax collection in a special fund as provided by section 21-02-07. As taxes are paid they are forwarded to the school district and the school district retires the certificates.

"Section 21-02-10 exempts a school district with a population over 4,000 from statutes governing the issuance of certificates of indebtedness. Does this statute also exempt county officials from collecting, holding and retiring certificates of indebtedness in school districts over 4,000 population?"

Section 21-02-07 of the North Dakota Century Code provides:

"TAXES CONSTITUTE SPECIAL FUND TO PAY CERTIFICATES. When any taxing district has issued certificates of indebtedness pursuant to the terms of this chapter, the county auditor shall set aside all taxes collected from levies for the respective years against which such certificates have been issued, except those for sinking and interest funds thereafter accruing to the credit of such district. The same shall be held by the county treasurer in a special fund to be used only for the purpose of retiring such certificates of indebtedness and paying interest thereon until sufficient funds shall have been accumulated from the collection of levies of any year or years against which certificates of indebtedness have been issued to retire the certificates of indebtedness of that year."

Section 21-02-10 of the North Dakota Century Code provides:

"MUNICIPALITIES HAVING POPULATION OVER FOUR THOUSAND EXEMPT FROM CERTAIN PROVISIONS. Any city, school district, or park district having a population of over four thousand may issue certificates of indebtedness in any amount not in excess of uncollected taxes of the current year plus uncollected taxes of prior years standing to the credit of the district, in such form and manner and subject to such terms and conditions as the governing board may prescribe, and need not comply with nor

conform to any of the other provisions of this chapter pertaining to the issuance of certificates of indebtedness unless such board shall choose to avail itself of such provisions." (Emphasis ours)

The answer to the question presented would appear to depend upon the interpretation of the word "issuance" as used in the statute quoted immediately above. If the term is used in its broadest sense to include not only the actual procedure of issuance of the certificates of indebtedness but the collection of taxes and payment thereof as well, it would appear the funds for retirement thereof need not be held by the county treasurer as provided in section 21-02-07 but may be remitted to the treasurer of the school district as are any other general taxes of the school district. On the other hand, if the term "issuance" is given its ordinary meaning, section 21-02-10 applies only to the actual procedures of issuance of the certificates of indebtedness and would not apply to the subsequent procedures involving tax collection and payment of the certificates. In such instance it would appear the funds for retirement of the certificates must be held by the county treasurer as provided in section 21-02-07.

Section 1-02-02 of the North Dakota Century Code provides that words used in any statute are to be understood in their ordinary sense, unless a contrary intention plainly appears, but any words explained in the North Dakota Century Code are to be understood as thus explained. The term "issuance" is not defined by the North Dakota Century Code. In view of this fact we believe the term "issuance" must be used in its ordinary sense and, therefore, the provisions of section 21-02-10 are applicable only to the actual procedures involved in issuing the certificates and not to the subsequent procedures involved in collection of taxes, holding of taxes pledged to the redemption of the certificates, etc.

In reaching this conclusion we are aware section 21-02-10, as we have construed it, may not, in fact, exempt the municipalities specified therein from any substantial compliance with the provisions of chapter 21-02 and that an argument can be made section 21-02-10 was intended to apply precisely to the question at hand. We are also aware that prior to its amendment in 1965 and 1967, section 21-03-41, pertaining to bonds, permitted a school district, among other political subdivisions having a population in excess of 4,000, to have the sinking fund held by the school district treasurer rather than the county treasurer. We are also aware that the recent tendency of the Legislature has been to permit control of these special funds to be held by the treasurer of the particular political subdivision rather than the county treasurer. See section 21-03-04 and 1965 and 1967 amendments thereto. Nevertheless, if the specific requirements of section 21-02-07 are to be negated with respect to the collecting and holding of funds, we believe it must be accomplished in some manner other than an extremely broad construction of the term "issuance" as used in section 21-02-10.

In summary, we do not believe that section 21-02-10 exempts the county officials from collecting, holding and retiring certificates of indebtedness in school districts over 4,000 population.

HELGİ JOHANNESON

Attorney General