

April 23, 1937

LAW LIBRARY
ARIZONA ATTORNEY GENERAL

Mr. M. J. Hurley,
Director of Certification,
Supt. of Public Instruction Office,
Capitol Building,
Phoenix, Arizona.

Dear Mr. Hurley:

This will acknowledge receipt of the letter from the Superintendent of the Ajo Public Schools relative to what disposition should be made of certain surplus money in the hands of the District; which money was realized by a levy for the purpose of paying certain bonds and interest of the district, and remained on hand after the payment of all outstanding bonds and interest.

The authority to make a levy on a school district for the payment of bonds and interest will be found in Section 1022 of the Revised Code of Arizona, 1928; which states in substance as follows:

" the board of supervisors, at the time of making the levy of taxes for county purposes, must levy a tax in such school district for interest and redemption of school bonds and all money when collected, shall be paid into the county treasury to the credit of the building fund of such district, and must be used only for the payment of principal and interest on said bonds "

This limitation and restriction on the use of the money so collected is in accordance with the constitutional provision which is found in Article IX, Section 3 of the Constitution of Arizona, which reads as follows:

"No tax shall be levied except in pursuance of law, and every law imposing a tax shall state distinctly the object of the tax, to which object only it shall be applied".

The levy of a special tax in the Ajo School district by the Board of Supervisors of that County in accordance with Section 1022, supra, was made for a particular and special object, that is for the redemption of outstanding bonds and interest of that district of a certain issue. It is, therefore, apparent that the funds collected as a result of the levy made in accordance with section 1022, supra, must be used only for the purpose for which the levy was made.

M. J. Hurley,
Ajo Public Schools -2

This principle has been adopted by the courts in numerous cases, and the general rule is stated in Volume 56 Corpus Juris, at Page 553, as follows:

"The general school fund may, of course, be used for general school purposes, but in the absence of statutory authority therefor, funds set aside for particular purposes cannot be diverted to other purposes even tho the purpose for which the fund was established has been satisfied so that the moneys therein represent a surplus".

In the case of Hoboken v. Phinney, 29 N. J. Laws, at page 67, the court of that state uses this language.

"Upon general principles of law, a fund raised for a specific purpose, and placed in the hands of an officer for such specific purposes, cannot lawfully be applied to any other. Any such other appropriation would be a violation of the trust, and so contrary to law".

That statutes of the State of Arizona contain no authority permitting the use of funds set aside for a particular purpose or object to be diverted and used for other purposes; but on the contrary, expressly prohibit this practice.

It is apparent that the levy made for the payment of the outstanding bonds and interest was evidently excessive or such surplus would not have accumulated. No authority exists to levy taxes in excess of the needs of the district so that such district may accumulate a fund to be used in the future.

Therefore, it is the opinion of the Attorney General that the surplus funds on hand with the Ajo School District which were created as the result of a levy made in that district for the express object of paying certain outstanding bonds and interest of that district cannot be used for any other purpose, but must be placed in trust for the benefit of the district.

Yours very truly,

JOE CONWAY
Attorney General.

J. M. JOHNSON
Assistant
Attorney General

E. G. FRAZIER
Special Assistant
Attorney General.