**OPINION**
**62-200**

February 13, 1962(OPINION)

SCHOOL DISTRICTS

RE: Reorganization - Bonded Indebtedness

This is in reply to your request for an opinion, telephone conversations and conferences with individuals who came down to this office at your suggestion in regard to the reorganization problem in Scotia Special School District, Landa, North Dakota.

You inform us that the district has a bonded indebtedness of some $99,000.00 where the assessed valuation on the 50% basis is approximately $500,000.00. Computing the debt limit of the district pursuant to Section 183 of the North Dakota Constitution, you indicate that the full debt limit is approximately $100,000.00.

In the proposed reorganization plan presently at issue, an area having an assessed valuation of $125,000.00 will be detached from the Scotia District and attached to the Souris District. It further appears that plans presently in existence would result in the complete dissolution of the Scotia Special District.

Apparently a school building has been built from part of the proceeds of the bond issue but a part of the bond proceeds still remain.

You ask three specific questions as follows:

> "1. May the reorganization Committee prepare a plan providing the area going into the Souris Special School District ($125,000.00) reduces the interest and Sinking fund of the Scotia Special School District by one half or approximately ten mills and assume a like amount of bonded indebtedness of the Souris School District? This, as you see would leave a greater burden upon the remainder of the Scotia Special School District to pay on the interest and Sinking Funds. The theory in reducing the Interest and Sinking Fund levy for the area going into Souris being that the new school building would be in the remainder of the Scotia Special School District whose inhabitants would have the use of the school building.
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> "2. Would an area being attached to the Souris District have any right to the proceeds of the bonds in its proportionate share - for instance - if there is $80,000.00 in bond money could that area take one fourth of the $80,000.00 or $20,000.00 with it to Souris?

"3. May the reorganization committee allow the area going into Souris escape paying any interest and Sinking Fund of the Scotia Special School District on the theory that its people will never use the building or are they bound by the existing interest and Sinking fund levies?"

You further inform us that in all of these theoretical situations it is assumed that they are going into the Souris District and will assume a certain share of the Interest and Sinking Fund of the Souris District.

In regard to bonded indebtedness, we assume that there has been compliance with the provisions of section 21-03-15 of the North Dakota Century Code, as amended by section 1 of chapter 196, 1961 Session Laws, to the effect that the municipality after the sale of such bonds and before the delivery thereof has levied by recorded resolution a direct, annual tax sufficient in amount to pay, and for the express purpose of paying the interest on such bonds as it falls due, and also to pay and discharge the principal thereof at maturity. Pursuant to said statutes such municipality shall be and continue without power to repeal such levy or to obstruct the collection of said tax until such payments have been made or provided for. Also pursuant to such statute "If the governing body of the issuing municipality no longer exists, the county auditor shall levy a direct tax against the taxable property in the original issuing municipality to pay said deficiency and the interest thereon.

It would thus appear that the original bond issue tax levy is and will be a primary obligation of the territory of the municipality which voted on and issued the bonds, though the statute apparently contemplates that other provisions for payment might be made.

Section 15-53-08 of the North Dakota Century Code provides:

"15-53-08. DETERMINATION AND ADJUSTMENT OF PROPERTY, ASSETS, DEBTS AND LIABILITIES AMONG DISTRICTS. The county committee shall determine the value and amount of all school property and all bonded and other indebtedness of each school district affected in a reorganization plan and consider the amount of all outstanding indebtedness and shall make an equitable adjustment of all property, assets, debts and liabilities among the districts involved after the hearing provided for in section 15-53-09."

On the basis of the hereinbefore considered statutory provisions, it is our opinion that each or all of the three suggestions you present would be legally feasible as a method of otherwise providing for the payment of the bonded indebtedness of the Scotia Special School District. However, we think there is a much more complex problem involved in the determination of whether such divisions as are suggested would constitute an "equitable adjustment."

Taking for example the first suggestion, i.e. that the territory going into the Souris Special School District have its interest and sinking fund levy reduced to half of the original levy, and then assume a proportionate share of the bonded indebtedness of the Souris District. You explain that this would be justified by reason of the fact that the new school building would remain in the Scotia District whose inhabitants would have the use of same. Theoretically this would appear at least to be within the legal authority given the county committee, whether it would also be an equitable result would, of course, depend on all surrounding circumstances, i.e. actual value of this asset, the school building, present status of old territory, and present plans of old territory, in addition to the circumstances of the portion of Scotia District going into the Souris District.

The second question in regard to whether the area being attached to the Souris District would have any right to proportionate shares of the bond proceeds also would appear legal though possibly inequitable under all other circumstances. The surplus in bond proceeds would appear to us to be the most liquid and flexible asset available. It has a fixed and determinable value and can be used, we would presume, for any type of school project, whereas other assets and liabilities of the district have a much more fixed and permanent status, i.e. the school building's value as such would be dependent upon the geography of the new districts and the bond issue represents a fixed liability for a period of years. While, theoretically, we can follow the line of reasoning that would indicate that the proportionate share of bond proceeds should logically follow the territory in the first instance liable for the tax to pay for such bond proceeds, it would seem more feasible to use such funds to equalize such indebtedness or possible otherwise inequitable circumstances of the various parts of the district.

As to the third question, we believe it can be answered on a strictly legal basis. Actually, in view of the above quoted statutory provisions, we believe that the territory of the municipality as of the time of levying the tax would be primarily liable for the tax from thenceforward. However, dependent upon all surrounding circumstances, we believe that the reorganization committee could under the above quoted section 15-53-08 direct that the remaining territory pay all existent bonded indebtedness.

LESLIE R. BURGUM
Attorney General