OPINION
45-211

June 5, 1945 (OPINION)

MUNICIPAL BONDS

RE: When Callable

This will acknowledge the receipt of your letter under date of June 1, 1945, wherein you say that Hettinger special school district no. 13 has $25,000.00 in refunding bonds outstanding, all callable on December 1, 1945; that the interest rate on these bonds is 3 1/2 percent per annum; that your school board has been informed that they can refinance this bonded indebtedness at 1 3/4 percent. You desire to know whether or not the school district may issue new bonds in lieu of the outstanding bonds and thus effect a substantial saving in interest.

I assume that although the outstanding bonds are callable December 1, 1945, they are not due on that date. In other words, I assume that the school district has the privilege of paying this bonded indebtedness before the bonds are due.

There does not appear to be any statutory authority for issuing bonds merely to replace existing bonds except that municipalities may issue refunding bonds to refinance municipal enterprises, such as electric lighting systems, waterworks, etc; that is to say, enterprises which are sometimes referred to as self-liquidating.

Subdivision b of subsection 7 of section 21-0306 of the North Dakota Revised Code of 1943 provides that a village may issue bonds "to provide necessary funds for the payment of the principal and interest of bonds, due or about to become due, for the payment of the principal and interest of bonds, due or about to become due, for the payment of which the municipality has not sufficient funds, but only to the extent of such deficit."

It is, of course, apparent that the statutory provision above mentioned does not cover the proposition of refinancing existing bonded indebtedness merely for the purpose of effecting a reduction in the rate of interest. Therefore, your county auditor is right insofar as a strict and literal construction of the statute is concerned.

On the other hand, the refinancing of existing callable bonds at a lower rate of interest is only good common-sense business practice. No one can complain. Taxpayers are benefited. The holders of existing bonds cannot object because the present bonds are callable December 1, 1945, and could be paid in full if sufficient funds were available in a sinking fund accumulated for that purpose.

It is, therefore, the opinion of this office that notwithstanding the absence of specific statutory authority, when bonds are, by the terms thereof, callable they may be regarded as due on the callable date and that new bonds may be issued and sold in lieu thereof if and when it can be clearly shown that a saving will be effected and the taxpayers benefited.

NELS G. JOHNSON

Attorney General