



**THE ATTORNEY GENERAL  
OF TEXAS**

Gerald C. Mann  
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ATTORNEY GENERAL

**AUSTIN 11, TEXAS**

Honorable Tom A. Craven  
County Auditor  
McLennan County  
Waco, Texas

Dear Sir:

Opinion No. O-4412

Re: Whether school district  
may use excess of main-  
tenance tax over 50¢ on  
the \$100.00 valuation  
for payment of debts  
created in prior years

We have received your letter of recent date  
which we quote in part as follows:

"In order to qualify for State Rural  
Aid, it is necessary for fifty cents of the  
Rural Maintenance Tax of a school to be used in  
caring for the rural aid needs of such school.  
Rulings from your department indicate that any  
maintenance tax levied by a school over and above  
this required fifty cents may be used for any  
legal purposes.

"The County Superintendent of McLennan  
County is, I think, using a too liberal inter-  
pretation of the term 'legal purpose' as a basis  
for approving certain common school district  
expenditures. My contention is that current  
local maintenance tax revenues are not eligible  
for the payment of debts incurred during prior  
years until the necessary expenses for the  
current year are satisfied. The local County  
Superintendent is paying out of current local  
maintenance tax revenues, and contends he is le-  
gally justified in doing so., debts incurred in  
prior years, which were in excess of prior year  
budgets, to the exclusion of necessary current  
expenses and, in some instances, when funds  
are not even available to pay teachers' salaries  
for the current year."

Honorable Tom A. Craven, page 2, O-4412

We quote from Sec. 2 of the Current Rural Aid Appropriation Bill (Acts 47th Leg., ch. 549):

" . . . .After the indebtedness in these funds; if any, has been retired the income from this maintenance tax in excess of the required fifty cents (50¢) maintenance tax may be used at the discretion of the local school authorities of the district for any lawful school purpose."

Your question resolves itself into the proposition whether that part of the maintenance tax levy of a school district which is in excess of fifty cents on the \$100.00 valuation may be used to pay obligations of prior years.

Recently this department rendered Opinion No. O-4257 dealing with the payment of debts of a school district of one year with the revenues of a subsequent year. We quote from that opinion as follows:

"... This department has consistently held that debts created by a school district in a certain year which create a deficiency in the school fund for that year are in violation of law and create no claim against the district. In other words, the trustees of a school district are not authorized to create a debt payable out of the revenues of the district of a subsequent year. Opinions No. O-4001, No. O-2231; Collier v. Peacock, 54 S.W. 1025; Templeman Common School District v. Boyd B. Head Company 101 S.W. (2d) 352; First National Bank of Athens v. Murchison Independent School Dist., 114 S.W. (2d) 382; Harlingen Independent School Dist. v. C.H. Page & Bro. 48 S.W. (2d) 983.

" . . . .

" . . . .Debts may not be contracted greater than the amount of available funds on hand or that may be reasonably anticipated for that school year. A debt created in excess of such amount is void and constitutes no claim against the district. Obligations expressly payable out of funds accruing to the district in a subsequent scholastic year may not validly be created by the trustees of a school district; such obligations are void and create no liability whatsoever

on the part of the district. If in a previous year a debt was validly created in reasonable anticipation of revenues to be collected for that year, but the fund actually realized was insufficient to discharge the same, such debt may be paid from the delinquent taxes of such previous year or years prior thereto. Such a debt cannot be paid from the revenues of a subsequent year, at least unless there is an actual surplus in the fund after the discharge of all the obligations of such subsequent year; however, as there is no such surplus in the fund of the school district involved, it is not necessary for us to pass upon this point, and we express no opinion thereon."

We are of the opinion that the cases cited in Opinion No. O-4257 are applicable to a school district whether or not it levies more than a fifty cent maintenance tax, that the same limitations are present with respect to the funds of the district realized from a maintenance tax of more than fifty cents, and that the principles announced in Opinion No. O-4257 are therefore, applicable to the subject matter of your inquiry. It follows that an expenditure of school funds in violation of such principles would not be for a lawful purpose. We enclose a copy of Opinion No. O-4257 for your consideration.

Very truly yours

ATTORNEY GENERAL OF TEXAS

s/ George W. Sparks

Approved Feb. 24, 1942

By George W. Sparks  
Assistant

s/ Grover Sellers

First Assistant  
Attorney General

Approved Opinion Committee  
By BWB, Chairman

GWS:ff/cg