School Districts—Limit of Indebtedness—Warrants.

The warrants issued by a new school district in favor of the old district, from which it is organized, in the adjustment of indebtedness between the old and new district, cannot be added to the sinking fund of the old district and be deducted from an outstanding bond issue in computing the amount of indebtedness of the old district.

May 24, 1917.

Hon. James L. Davis,
County Attorney,
Billings, Montana.

Dear Sir:

You have requested my opinion upon the proposition as to whether or not a warrant issued by a new school district in favor of the old school district, from which it is organized, in the adjustment of the indebtedness between the old and the new district, can be added to the sinking fund of the old district and be deducted from an outstanding bond issue, in computing the amount of indebtedness of the old school district.

I think it is quite generally recognized that a sinking fund is a proper offset as against existing bonds, in payment of which it is pledged.

McQuillin Mun. Corp. Sec. 2238;
Stone v. Chicago, 207 Ill. 492, 69 N. E. 970;
Kelly v. Minneapolis, 63 Minn. 125, 65 N. W. 115; 30 L. R. A. 281;
Schuldice v. Pittsburg, 234 Pa. St. 90, 82 Atl. 1125;
EauClaire v. Water Co. 137 Wis. 517, 119 N. W. 555;
Williamson v. Aldrich, 21 S. D. 13, 108 N. W. 1063;
28 Cyc. 1584.

In Jordan .vAndrus, 27 Mont. at 26, our Supreme Court reserved its decision upon the question of whether cash on hand in the general fund may be deducted as a proper offset in determining the amount of indebtedness. But it would appear that it could be deducted, from the following authorities:

McQuillin Mun. Corp., Sec. 2237;
Graham v. City of Spokane, (Wash.) 53 Pac. 714;
Crogster v. Bayfield County, 99 Wis. 1, 74 N. W. 635;

In Jordan v. Andrus, supra, the Court refused to permit the reduction of a claim which Miles City had against Custer County for road taxes collected for the city, and in discussing this question used the following language:

> "The constitutional prohibition is plain, and not easily misunderstood. Notwithstanding the many decisions rendered by courts of great learning and high respectability to the contrary, we hold that within the purview of Section 6 of Article XIII, supra, "indebtedness" means what the city owes, irrespective of the demands it may hold against others. Similar statutory provisions of organic law have often been frittered away, disregarded or perverted by means of strained or unnatural interpretations. We refuse to follow them. A private person who owes $10,000 and at the same time has assets of the value of $100,000, is indebted to the former amount. His net financial worth is $90,000; but the fact that his bills receivable are greater than his liabilities does not and cannot cancel the debt. So with the city."

In view of the foregoing language of our own Supreme Court, I do not believe that the old school district would be permitted to deduct the amount of this warrant in computing its indebtedness. I fully appreciate the fact that this may work a hardship upon the old school district, which I understand desires to issue further bonds for the purpose of building another school building. Of course, the new school district may issue refunding bonds, in accordance with the provisions of Section 405 (6) of the School Law, to provide funds to pay this warrant which it has issued under Paragraph 4 of the same section, to adjust the indebtedness with the old district, and then the proceeds would be added to the sinking fund of the old district. This will mean a loss of considerable interest to the old district, but I do not see any other way to take care of the present situation.

Respectfully,

S. C. FORD,

Attorney General.