

## Chapter 328

### Local Financing of Education

#### 328.005

##### NOTES OF DECISIONS

This section, as amended in 1965, permits the counties to set off revenues from other sources against the mandatory levy. *School Dist. 24J v. McCarthy*, (1966) 244 Or 379, 418 P2d 817.

**FURTHER CITATIONS:** *School Dist. 24 v. Smith*, (1920) 97 Or 1, 191 P 506; *School Dist. 1 v. Shull*, (1938) 160 Or 225, 84 P2d 479; *School Dist. 4 v. Bayly*, (1951) 192 Or 548, 235 P2d 911; *Davis v. Miller*, (1967) 246 Or 102, 424 P2d 250.

**ATTY. GEN. OPINIONS:** Discretion of county court as to levy of tax for school fund to extent required, and authority to divert taxes collected, 1922-24, p 74; statute as mandatory, 1928-30, p 81; Common School Fund tax levy of \$10 per capita, as in addition to other moneys in such fund, 1928-30, p 424; duty to make a sufficient levy, so that such levy will produce, regardless of reasonable tax delinquency, not less than \$10 per capita for all school children within the county, 1932-34, pp 66, 96; reducing per capita amount if income from delinquent taxes is available for same purpose, 1940-42, p 5; levy as considered part of budget estimate within limitation of Ore. Const. Art. XI, §11, 1940-42, p 636; use of anticipated receipts from land sales to reduce county school fund levy, 1946-48, p 282; use of forest reserve rentals to reduce the county school fund levy, 1950-52, p 199; effect of bond sinking fund surplus on annual levy, 1962-64, p 3; construing 1965 amendment, 1964-66, p 388, 1966-68, p 3; use of rentals to reduce county school fund levy, 1964-66, p 479; apportionment if census report is in error, 1966-68, p 488.

**LAW REVIEW CITATIONS:** 4 WLJ 567-572.

#### 328.010

##### NOTES OF DECISIONS

Under a former similar statute, the making of a report by a district was a prerequisite to the apportionment of funds to it. *State v. Bryan*, (1894) 26 Or 502, 38 P 618.

**ATTY. GEN. OPINIONS:** Whether school district board can keep school open 160 days in order to receive apportionment and pay necessary teachers' salaries where voters fail to approve budget over six percent limitation, 1942-44, p 9.

#### 328.015

##### NOTES OF DECISIONS

Under a former similar statute, a county school superintendent could not be compelled to apportion the school fund among the several districts of a county until such districts, or at least some of them, had reported as required by law. *State v. Bryan*, (1894) 26 Or 502, 38 P 618.

Under a former similar statute, a district had no vested right to the money arising from the levy of the county school tax until it has been segregated and apportioned to

the district. *School Dist. 2 v. Lambert*, (1895) 28 Or 209, 221, 42 P 221.

**ATTY. GEN. OPINIONS:** Method of securing return of portion of general fund erroneously diverted to school fund and disbursed by county school superintendent to districts before discovery of the mistake, 1928-30, pp 126, 421; interpretation of sections, 1936-38, p 310; remedy of parents of children deprived of school in their own district by board's inaction, 1944-46, p 285; apportionment of surplus county school fund receipts, 1950-52, p 199.

#### 328.105

##### NOTES OF DECISIONS

A school district has capacity to receive property devised to it by will. *Vestal v. Pickering*, (1928) 125 Or 553, 267 P 821.

#### 328.155

##### NOTES OF DECISIONS

A school district has the capacity to receive property devised to it by will. *Vestal v. Pickering*, (1928) 125 Or 553, 267 P 821.

#### 328.205

##### NOTES OF DECISIONS

The legislature intended to empower the issuance of bonds for the erection of any structure the district was authorized to construct and which the district deemed necessary or desirable in carrying out its educational program. *School Bd. of Sch. Dist. U2-20 Jt v. Fanning*, (1962) 232 Or 593, 377 P2d 4.

An issue of school bonds for any purpose enumerated in this section may be validly authorized at an election called for that purpose without any other authorization. *School Dist. 17 v. Powell*, (1955) 203 Or 168, 279 P2d 492.

**ATTY. GEN. OPINIONS:** District attorney as attorney for school district in issuance of bonds, and compensation therefor, 1920-22, p 339; employment by board of person to prepare petition, etc., in connection with the election and sale of bonds, and payment of cost for such service, 1920-22, p 430; board upon its own motion calling election on question of issuing bonds, 1924-26, p 217; authority of district to pay in whole or in part for the construction of a building not owned by district, 1930-32, p 56; authority of dissolved or newly consolidated district to issue bonds to refund indebtedness of dissolved district, 1936-38, p 166; use of proceeds of bonds in localities other than those specified in the bond election, 1948-50, p 311; power of electors to modify the purposes for which bond proceeds may be used, 1948-50, p 362; paying for school bus where fund not available, and validity of special election on tax levy held in first class district, 1950-52, p 266; use of bond proceeds to purchase band uniforms, 1956-58, p 233; authority to call election on bond issue for construction of a swimming pool,

1960-62, p 149; purchase of real property on conditional sales contract where total price exceeds funds currently budgeted, 1962-64, p 95; acquisition of federal surplus real property, 1962-64, p 462.

### 328.210

CASE CITATIONS: School Dist. 17 v. Powell, (1955) 203 Or 168, 279 P2d 492.

ATTY. GEN. OPINIONS: District attorney acting as attorney for a school district in the matter of issuing bonds, 1920-22, p 339; authority of board to issue bonds without an election to cover warrants issued for running expenses, 1920-22, p 409; board as authorized to employ person to prepare petition, etc., in connection with the election and sale of bonds, and to pay for cost of such service from the general fund of the district, 1920-22, p 430; legality of bond issue of a district, 1936-38, p 359; validity of bonds in case of discrepancy in statement of time of maturity in notice of election and in motion of board, 1936-38, p 642; effect of minor irregularities in notice of election, 1948-50, p 279.

### 328.213

#### NOTES OF DECISIONS

##### 1. In general

An authorization of the board to incur indebtedness is followed by operation of law by their right to levy a tax to discharge it. Landers v. Van Aukin, (1915) 77 Or 479, 484, 151 P 712.

An injunction will be granted restraining the board from paying for the digging of a well on school grounds where the amount was not included in the budget, nor authorized by the voters of the district. Tuttle v. Beem, (1933) 144 Or 145, 4 P2d 12.

That the resolution bore the phrase "to bond the district" did not deprive the board of authority to issue negotiable interest-bearing warrants. McBee v. Sch. Dist. 48, (1939) 163 Or 121, 96 P2d 207.

An architect cannot recover from a board for drawing plans and specifications for a building which called for greater expenditures than the board could authorize. Laing v. Sch. Dist. 10, (1950) 190 Or 358, 224 P2d 923.

##### 2. Under former similar statute

A vote of the electors of a district authorizing the directors to contract a greater debt than the law permitted was sufficient authority to incur a debt to the lawful limit. Vaughn v. Sch. Dist. 31, (1895) 27 Or 57, 39 P 393.

The records of a school meeting need not show that the indebtedness authorized to be incurred to build a schoolhouse did not exceed the legal limit. Amort v. Sch. Dist. 80, (1906) 48 Or 522, 87 P 761.

The power to build schoolhouses, purchase the sites therefor, and to issue bonds could be conferred by one and the same vote at an election called to vote on the question of contracting a bonded indebtedness to build a school and purchase a site. Baxter v. Davis, (1911) 58 Or 109, 112 P 410, 113 P 438.

A board could exercise only powers expressly granted by statute, and such as were necessary to carry the granted powers into effect. Id.

FURTHER CITATIONS: Barrow v. Sch. Dist. 8, (1917) 83 Or 272, 162 P 789; School Dist. 47 v. U. S. Nat. Bank, (1949) 187 Or 360, 211 P2d 723.

ATTY. GEN. OPINIONS: Authority of board to issue warrants in payment of a teacher's salary, payable from the first moneys received in the district treasury, 1920-22, p 550; funding warrants issued without authority of majori-

ty votes of legal voters, 1922-24, p 25; authority of district to contract debt, 1922-24, p 820; rights of districts to borrow money, 1932-34, p 53; money from emergency fund in building schoolhouse, 1934-36, p 443; registration of negotiable interest-bearing warrants of district, 1936-38, p 207; authority of district to vote to authorize a bond issue in excess of statutory limitation, and to issue bonds up to limitation, and to issue balance when the valuation of the taxable property shall have increased sufficiently to permit such issuance, 1936-38, p 654; leasing of schoolhouse and financing the same, by second class district, 1950-52, p 13; validity of special election on tax levy held in first class district, and paying for school bus where fund not available, 1950-52, p 266; acquisition of federal surplus real property, 1962-64, p 462.

### 328.215

#### NOTES OF DECISIONS

Under a former similar statute, proof of posting notices by certificate or affidavit was a convenient and proper way of showing on the record that the notices had been published. Keeler Bros. v. Sch. Dist. 108, (1919) 91 Or 316, 178 P 218.

FURTHER CITATIONS: Miller v. Sch. Dist. 1, (1922) 106 Or 108, 211 P 174.

ATTY. GEN. OPINIONS: What constitutes posting "for 15 days," 1954-56, p 213; newspaper not physically published in district, 1954-56, p 213.

### 328.230

#### NOTES OF DECISIONS

Under a contract to prepare for defendant district all legal proceedings necessary for the issuance of bonds by the district, plaintiff could not without any action of the board proceed to put the bonds in denominations as it saw fit, and after delivering them rely upon that as a compliance. Keeler Bros. v. Sch. Dist. 108, (1919) 91 Or 316, 178 P 218.

FURTHER CITATIONS: Landers v. Van Aukin, (1915) 77 Or 479, 151 P 712; Grant v. Sch. Dist. 61, (1966) 244 Or 133, 415 P2d 165.

ATTY. GEN. OPINIONS: Discretion of board as to time of issuing bonds, 1946-48, p 244.

### 328.235

#### NOTES OF DECISIONS

Bonds not signed by the chairman of the board are not valid and legal obligations. Riggs v. Polk County, (1908) 51 Or 509, 95 P 5.

### 328.245

#### NOTES OF DECISIONS

An architect could not recover from a school board for drawing plans and specifications for a building which called for greater expenditures than the board could authorize. Laing v. Sch. Dist. 10, (1950) 190 Or 358, 224 P2d 923.

ATTY. GEN. OPINIONS: Authority of district to vote to authorize a bond issue in excess of statutory limitation, and to issue bonds up to limitation, and to issue balance when the valuation of the taxable property has increased sufficiently to permit such issuance, 1936-38, p 654; computation of maximum amount of bonded indebtedness, 1956-58, p 184.

## 328.255

## NOTES OF DECISIONS

The legality of district bonds executed, registered and delivered to the purchaser after an election for their issuance is incontestable in the absence of fraud or some fatal defect in the proceedings, known to the purchaser at or before purchase. *Pullen v. Sch. Dist. 3*, (1920) 95 Or 289, 186 P 9, 187 P 624.

Release by a county treasurer of district bonds without receiving and retaining payment therefor, in violation of the statute, renders him and the surety upon his bond liable for the resultant loss. *Klamath County Sch. Dist. v. Am. Sur. Co.*, (1929) 129 Or 248, 275 P 917.

ATTY. GEN. OPINIONS: Holding funds arising from sale of bonds by county treasurer until achievement of the purposes for which they were sold, 1924-26, p 125, 1954-56, p 35; registration of bonds by deputy during temporary absence of county treasurer, 1926-28, p 14; under what conditions the county treasurer can release the proceeds, 1948-50, p 32; county treasurer's treatment of accrued interest and premium payments received when bonds are sold, 1948-50, p 119; when county treasurer can give up possession of the bonds before he receives payment, 1948-50, p 297; use of proceeds of bonds in localities other than those specified in the bond election, 1948-50, p 311; power of electors to modify the purposes for which bond proceeds may be used, 1948-50, p 362; authority of county treasurer to invest proceeds of bond sale not immediately needed for the purpose for which the bonds were issued, 1950-52, p 342; funds raised by bond issue in custody of county treasurer, 1954-56, p 193; authority to call election on bond issue for construction of a swimming pool, 1960-62, p 149; proper account for interest earned on bond proceeds, 1964-66, p 174.

## 328.260

## NOTES OF DECISIONS

The fund could have been claimed at the maturity of the bond and the presumption of abandonment began to run from maturity. *State ex rel. Mallicoat v. Coe*, (1969) 254 Or 365, 460 P2d 357.

ATTY. GEN. OPINIONS: Authority of district to use portion of sinking fund created for the purpose of paying an outstanding bond issue to purchase school site or other real property, 1924-26, p 87; use of sinking fund of district for purpose of purchasing of time warrants or in building a school house, 1926-28, p 299; right of board to include in levy for payment of bonds the increased amount necessary to make up for deficiencies in tax collections, 1932-34, p 114; district as authorized to borrow or transfer money from fund held for payment of interest on bonds and replace same by issuance of further warrants, 1934-36, p 86; when the sheriff may not withhold from a district the proceeds of delinquent taxes, 1934-36, p 356; procedure in connection with custody and disbursement of sinking fund raised for paying interest and principal of negotiable interest-bearing warrants, 1936-38, p 207; county treasurer's treatment of accrued interest and premium payments received when bonds are sold, 1948-50, p 119; levy for bonded indebtedness, 1956-58, p 122; retirement of "callable" bonds, 1962-64, p 3; proper account for interest earned on bond proceeds, 1964-66, p 174; proposed constitutional tax limit, (1968) Vol 34, p 203.

## 328.265

ATTY. GEN. OPINIONS: Duty of district to impose a sufficient annual tax to meet the demands of its bondholders,

1932-34, p 114; proposed constitutional tax limit, (1968) Vol 34, p 203.

## 328.275

## NOTES OF DECISIONS

Release by a county treasurer of bonds without receiving and retaining payment therefor, in violation of statute, renders such treasurer and the surety upon his bond liable for the resultant loss. *Klamath County Sch. Dist. v. Am. Sur. Co.*, (1929) 129 Or 248, 275 P 917.

ATTY. GEN. OPINIONS: Duty of county treasurer to redeem bonds, 1924-26, p 204; effect of 1923 c. 190 §2, repealed by 1937 c. 30 §1, on redemption of bonds, 1924-26, p 204; retirement of "callable" bonds, 1962-64, p 3.

## 328.280

ATTY. GEN. OPINIONS: Funding of unauthorized warrants of districts, 1922-24, p 25; authority of State Land Board to accept refunding bonds of a district in exchange for outstanding bonds of such district, 1932-34, p 279.

## 328.290

ATTY. GEN. OPINIONS: Errors and irregularities in transcript of bond proceedings of district, 1936-38, p 46.

## 328.295

ATTY. GEN. OPINIONS: School board's authority to sell bonds for less than best price obtainable, 1922-24, p 445; advertisement of bonds, 1926-28, p 14, 1928-30, p 217; necessity of advertising bonds prior to exchange for other bonds, 1932-34, p 311; publication of notice of sale of refunding bonds of union high school district, 1932-34, p 418; when failure to open bids for bonds of district on date set in published notice does not invalidate bonds, 1934-36, p 804; authority of bond commission to exchange union high school district bonds for refunding bonds, 1938-40, p 332.

## 328.441

## NOTES OF DECISIONS

The purpose of a former similar statute was to relieve the clerk from the rigor of the common law rule which made the officer personally liable in the event of public funds being lost by reason of bank failures. *New Amsterdam Cas. Co. v. Robertson*, (1929) 129 Or 663, 278 P 963, 64 ALR 1396.

FURTHER CITATIONS: *School Dist. 47 v. U.S. Nat. Bank*, (1949) 187 Or 360, 211 P2d 723.

ATTY. GEN. OPINIONS: Clerk as custodian of district funds, 1920-22, p 272; right of officers of board to sign an agreement to waive 30 percent of deposit belonging to district, in order to assist insolvent bank to reopen, 1926-28, p 390; duties of county auditor as applying to school funds which are disbursed by warrants drawn on county treasurer, 1942-44, p 43; holding funds raised by serial tax levy in custody of clerk, 1942-44, p 301; methods by which clerk may be relieved of personal liability if he does not deposit funds in depository designated by board, 1946-48, p 442; payment of school bills by a negotiable "check warrant," 1950-52, p 89; propriety of attachment of warranty to payroll for payment of numerous payees, 1950-52, p 136; applicability of this section to funds raised by bond issues in custody of county treasurer, 1954-56, p 35; funds raised by bond issue in custody of county treasurer, 1954-56, p 193; authority of school district board and clerk to select depository, 1960-62, p 115; conflict of interest of school board

member who is manager of depository bank, 1960-62, p 415; proper account for interest earned on bond proceeds, 1964-66, p 174.

**328.445**

ATTY. GEN. OPINIONS: Validity of special election on tax levy held in first class district, 1950-52, p 266.

**328.450**

**NOTES OF DECISIONS**

**1. Under former similar statute**

Ordinary demand warrants issued by a district in satisfaction of a judgment rendered upon warrants previously issued by the district were not entitled to priority of payment over all outstanding unpaid warrants bearing earlier indorsements. *Cole v. Sch. Dist.* 30, (1935) 151 Or 12, 47 P2d 229.

A peremptory writ of mandamus could be granted compelling a district to make an adequate levy to retire outstanding warrants in a reasonable time. *Id.*

School warrants were not, unless expressly made so by statute, negotiable instruments, and were open to all defenses in the hands of bona fide holders, as were available between the original parties. *School Dist. 47 v. U.S. Nat. Bank*, (1949) 187 Or 360, 211 P2d 723.

FURTHER CITATIONS: *Funston v. Dist. Sch. Bd.*, (1929) 130 Or 82, 278 P 1075, 63 ALR 1410; *Crawley v. Munson*, (1929) 131 Or 428, 283 P 29.

ATTY. GEN. OPINIONS: Refusal of payment of current teacher's salary warrants where prior indorsed unpaid warrants are outstanding, 1924-26, p 41; authority of board to draw warrants for amount in excess of sum called for in salary contracts, 1924-26, p 667; right of district to pay discount to banks for cashing teachers' salary warrants which are marked "not paid for want of funds", 1926-28, p 188; power of district to call in outstanding warrants and issue a warrant covering the amount of outstanding warrants and accrued interest, 1926-28, p 338; issuance of warrants marked "not paid for want of funds" in payment of teachers' salaries and current expenses, 1926-28, p 376, 1930-32, p 509, 1946-48, p 323; power to pay additional compensation under guise of discount to bank where teacher sells salary warrant marked "not paid for want of funds" at bank, 1926-28, p 188; right to contract with teacher for

payment of salary at such times as may be mutually agreed upon, 1930-32, p 627; availability for payment of outstanding warrants of districts of funds apportioned to districts from county school tax, irreducible school fund and elementary school tax, 1932-34, p 38; authority to redeem warrants without reference to time of priority of presentment, 1934-36, p 748; authority of district to issue warrants for building purposes payable out of cash on hand and revenue to be derived from collection of delinquent taxes, 1936-38, p 227; inserting provision into contracts that teachers' salaries shall be paid in 12 monthly instalments, 1944-46, p 504; provisions needed in budget to retire an indebtedness, 1948-50, p 336; payment of school debts by check without issuance of warrant, 1950-52, p 89; propriety of attachment of warranty to payroll for payment of numerous payees, 1950-52, p 136; validity of special election on tax levy held in first class district, and paying for school bus where fund not available, 1950-52, p 266.

**328.460**

ATTY. GEN. OPINIONS: When statute of limitation does not run against a warrant issued by an abandoned district, 1924-26, p 656.

**328.465**

ATTY. GEN. OPINIONS: Authority of district boundary board to enter into a contract with county school superintendent to audit the accounts of the several school districts for compensation, 1926-28, p 365; audit of books and accounts of union high school districts and common school districts of the first class, 1934-36, p 21; charging fees and manner of paying fees for filing audit reports, 1940-42, p 367; duties of county auditor as applying to school funds which are disbursed by warrants drawn on county treasurer, 1942-44, p 43.

**328.550**

ATTY. GEN. OPINIONS: Constitutionality of this section, 1950-52, p 126; effect of change in constitutional limit, 1964-66, p 429.

**328.555**

ATTY. GEN. OPINIONS: Adjustment of assets and liabilities under former ORS 330.630, 1962-64, p 113.