Opinion No. 58-241

December 29, 1958

BY: OPINION OF FRED M. STANDLEY, Attorney General Alfred P Whittaker, Assistant Attorney General

TO: Mr. Jack Love, Assistant District Attorney, County Court House, Lovington, New Mexico

QUESTION

QUESTIONS

1. May a hospital bond election be called, without petition, under a resolution provision of Section 15-48-4, N.M.S.A. 1953, in view of the provisions of Section 15-49-7, as amended?

2. Assuming an affirmative answer to Question 1, would the office of the Attorney General approve the bonds issued pursuant to such an election for purchase by the State, assuming the proceedings otherwise are in good order?

CONCLUSIONS

1. Yes.

2. See Analysis.

OPINION

ANALYSIS

We understand that the questions asked arise out of the circumstances recited. On July 7, 1958, the Board of County Commissioners of Lea County, acting pursuant to Section 15-48-4, enacted a resolution calling for a hospital bond election, to submit to the qualified voters of Lea County four propositions, stated briefly as follows. One, a bond issue of $ 125,000 for the purpose of erecting a hospital at Tatum and acquiring the land therefor; Two, a bond issue of $ 250,000 for the purpose of erecting a hospital at Eunice and acquiring the land therefor; Three, a bond issue of $ 250,000 for the purpose of erecting a hospital at Jal and acquiring the land therefor; and Four, a bond issue of $ 800,000 for the purpose of erecting a hospital at Lovington, and acquiring the land therefor. These propositions are more fully stated in the form of sample ballot attached to the opinion request. We understand that the proposal carried as to all four propositions, by an ample margin as to Lovington, and by lesser margins as to the other hospitals proposed. We are further advised that an election contest was thereafter begun concerning the Tatum, Eunice and Jal hospitals, in the District Court of Lea

County, New Mexico, in a proceeding entitled **Roger Grant et al v Lea County New Mexico, et al,** Nos. 16581, 16582 and 16589 on the docket of that court. We are further advised that the trial court, Brand, J., has overruled a motion by the county to dismiss the contest proceeding, which motion was made on the ground that Section 15-48-4 makes no provision for any such contest. The Court's ruling, as stated in the minutes of proceedings supplied us, appears to be based principally on the ground that Section 15-49-7, as amended by Ch. 83, Laws of 1951, authorizes contest of the election as provided for in the statutes governing general elections, and such provision is applicable, notwithstanding the absence of any provision for contest in Section 15-48-4.

At the threshold of this inquiry, we are faced with the question whether the questions presented are involved in the pending contest proceeding, so that this office, under its long settled practice, should decline now to give its opinion on that ground. The opinion request indicates that the questions presented are not involved in the contest proceeding, in the writer's view; and we are advised by counsel for the contestants that he concurs in this position. We understand, however, that counsel for the municipality of Lovington (not a party to the contest proceeding) contend that the trial court necessarily passed on the first question presented, in denying the motion to dismiss the election contest.

This office ordinarily exercises considerable caution to avoid infringement of the prerogatives of any tribunal before which a question may be pending, which is presented for ruling by the Attorney General. In this case, however, we do not feel that the question of the propriety of proceeding by resolution, without petition, the essential question now presented for ruling, is necessarily decided by the trial court's ruling that the right of contest exists under Section 15-49-7, as amended by Chapter 83, Laws of 1951. The trial court has ruled that the two relevant statutes must be harmonized to that extent. No ruling has been made or, in our view, can be made, in such contest proceeding, as to the question now presented. In view of that conclusion, and since counsel for the parties to the litigation concur in that view, we proceed to consider the questions presented on their merits.

We conclude, on careful study of the matter, that the provision of Section 15-48-4, authorizing the calling of a hospital bond election by simple resolution of the county commissioners, without petition, is not superseded by virtue of the 1951 amendment to Section 15-49-7.

Article IX, Section 10 of the Constitution of New Mexico provides:

"No county shall borrow money except for the purpose of erecting necessary public buildings or constructing or repairing public roads and bridges, and in such cases only after the proposition to create such debt shall have been submitted to the qualified electors of the county who paid a property tax therein during the preceding year and approved by a majority of those voting thereon. No bonds issued for such purpose shall run for more than fifty years."

It is well settled that this provision, and similar provisions of Article IX of the Constitution, constitute a limitation upon the power of the county to issue bonds, and do not constitute a grant of power. **Board of County Comm'rs v. State,** 43 N.M. 409 (1939). Thus, we must look to the statutes for authorization for bond issues such as those now in question. Such statutory authority has its genesis in Ch. 83 of the Laws of 1891, now compiled, as amended, at Sections 15-49-1 through 15-49-20, N.M.S.A. 1953. This statute sets forth a comprehensive procedure for the initiation of proceedings for the sale of bonds, the approval thereof by the voters, and the form and sale of bonds approved. Such bond issues relate to the building of those structures declared by the Legislature, in Section 15-49-1, to be necessary public buildings.

In 1947, the Legislature, by Ch. 20, amended this comprehensive statute by adding hospitals to the structures designated as necessary public buildings within the constitutional limitation. In so doing, it necessarily amended what is now compiled as Section 15-49-7, which provides the procedure for a special election to be called on a bond issue proposed for one of the stated purposes. That provision hinges upon the initiation of proceedings by the filing of a petition signed by not less than two hundred qualified electors, asking that a vote be taken upon the proposal to build such a hospital. This 1947 statute was approved February 21, 1947. However, the same Legislature also enacted Chapter 148, Laws of 1947, now compiled as Sections 15-48-1 through 15-48-9, N.M.S.A. 1953. This statute approved March 20, 1947, relates specifically to the construction of hospitals by counties, and in Section 4 (Sec. 15-48-4, N.M.S.A. 1953), provides a procedure governing the initiation of proceedings for an election upon the question, in terms generally similar to the procedure prescribed in the statute relating to public buildings generally (especially, Sec. 15-49-7). Section 15-48-4, however, as enacted, concludes with the following sentence:

"A bond election as above provided may also be called by the county commissioners, **without any petition,** after said commissioners have made a resolution calling such an election, which resolution shall set forth the object of the election and the amount of bonds to be issued (Emphasis added)."

In construing these two statutory provisions with respect to the question whether a negative vote on a proposition to construct a court-house precluded presentation of a proposition to construct a county hospital within two years thereafter, this office has heretofore held that in that respect the provisions of Chapter 148, Laws of 1948. (Sec. 15-48-4), must be viewed as superseding those of the general, earlier statute (Ch. 20, Laws 1948, Section 15-49-7). See Opinion No. 6451, issued May 28, 1956. In effect, this opinion, by its conclusion, sought to harmonize the two statutes. And in Opinion No. 5067, issued August 19, 1947, this office held that since the statute relating specifically to hospital bonds did not specify the method of sale, or time of sale, of such bonds, the procedure outlined in the statute relating to public buildings generally should be followed. Again, the effect of this ruling was to harmonize these statutory provisions. The case of **Carper v. Board of County Commissioners of Eddy County,** 57 N.M. 137 (1953), decided issues arising under Chapter 148, Laws of 1947, and so assumed

the effectiveness thereof following 1951, but did not expressly discuss or decide any question as to the construction of the two statutory provisions herein analyzed.

It has been suggested that the conclusion of Opinion No. 6451 is weakened by the fact that Chapter 83, Laws of 1951, amended Section 15-49-7, and so is the latest pronouncement of the Legislature on the matter. We cannot agree. Chapter 83, Laws of 1951, was enacted for the sole purpose of adding to the general statute a declaration that public libraries are necessary public buildings, and amended the procedural provision (now Section 15-49-7) only by adding reference to public libraries, and by providing for a procedure for contest of such bond elections. We find in the 1951 statute no warrant for concluding that there was thereby any implied repeal of the provision of Section 15-48-4 for the calling of an election on the proposal to construct a hospital, by resolution only, without petition. The 1951 statute had a limited purpose - to permit counties to build public libraries as necessary public buildings. The achievement of this purpose does not require repeal by implication of the relevant provision of Section 15-48-4. Repeals by implication are not favored, and wherever possible, two statutes will be construed together to that the objects to be attained by each will be preserved, if no contradiction, repugnancy, absurdity or unreasonableness will result. This proposition is well settled in New Mexico. See **State v Davisson,** 28 N.M. 653 (1923), error dismissed **Davisson v. State,** 267 U.S. 554 (1925); **Rader v. Rhodes,** 48 N.M. 511 (1944); **Alvarez v. Board of Trustees of La Union Townsite,** 62 N.M. 319 (1957); 82 C.J.S., Statutes, § 368, p. 836. We find no irreconcilable conflict between Sections 15-48-4 and 15-49-7, in this respect. Section 15-48-4 provides that the county commissioners may, by resolution, call for an election on the proposal to construct a county hospital. Chapter 83, Laws of 1951, evinces no legislative intent whatever to abolish such method of procedure. Under well-settled rules of statutory construction, both procedures may stand, and both statutes may stand.

On the basis of the foregoing, your first question is answered in the affirmative.

Your second question, assuming affirmative answer to the first, requests a statement of the course which this office would follow in determining whether such a bond issue should be approved for purchase by the State, assuming that the proceedings are otherwise in good order. It is not the practice of this office to answer questions which may never arise. In addition, we call to your attention that the incumbent Attorney General will leave office on December 31, 1958, as will the writer of this opinion; and that this office cannot undertake to bind the Attorney General-elect formally to the views above expressed.