

Opinion No. 63-144

October 28, 1963

BY: OPINION of EARL E. HARTLEY, Attorney General

TO: Mr. R. Howard Brandenburg Attorney for Taos Municipal Schools Taos, New Mexico

QUESTION

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If a school board, pursuant to Section 73-8-21, N.M.S.A., 1953 Compilation, exercises the right to call an election on the question of issuing school bonds without there first being filed a petition requesting such election, is it necessary that the election be held between January 15 and May 31, inclusive, of any given years?

CONCLUSION

No; however, the school board, if it calls for an election on its own motion without petitions having been filed asking for an election, must initiate its board resolution within the same restrictive time limits which are applicable to the filing of petitions.

OPINION

{*324} ANALYSIS

In answering the question presented, it is first pertinent to examine the legislative history of the Statutes governing the calling and holding of school bond elections.

Prior to 1959, a school bond election could only be initiated upon the filing with the local board of {*325} education of a petition asking for the calling of such an election, signed by at least ten percent of the qualified electors residing in the school district and who had paid a property tax therein during the preceding year. Such petition under Section 73-8-21, N.M.S.A., 1953 Compilation, could only be filed "between January 15 and May 31, inclusive (and at no other time)." Upon the filing of such petition, the local board of education, pursuant to Section 73-8-22, N.M.S.A., 1953 Compilation, was required to examine the sufficiency of the petition and upon affirmative finding of its adequacy was required to order that an election be called in the district upon the question of the issuance of such bonds, and the election was to be held not less than thirty nor more than fifty days after such finding.

The 1959 state legislature by Laws 1959, Chapter 92, amended the provisions of Section 73-8-21, N.M.S.A., to provide that as an **alternative** to the procedure of initiating such school bond elections by petition of qualified voters in such district, the

local school board might, upon its own, initiate, call and hold an election upon the issuance of school bonds. The applicable portion of Section 73-8-31, as amended in 1959, is as follows:

"To initiate the right to issue bonds hereunder a petition asking for the calling of an election, must be filed between January 15 and May 31, inclusive, and at no other time, with the county board of education in case of rural districts, with the municipal board of education in case of municipal districts. . .

Such boards of education may, as an alternative method call and hold an election upon the question of issuing bonds for such school district without there first being filed with the said board a petition asking for the calling of an election for such purpose, as hereinafter provided. . ." (Emphasis supplied)

Section 73-8-22, supra, was amended in 1959 also, to provide in applicable part:

"If said bond issue is initiated without a petition, the board shall pass a resolution of similar form but reciting that such election is ordered upon the board's own motion."

In addition, the 1959 legislature amended Section 73-8-31, supra, to provide that contests to challenge the validity of election petitions or resolutions may be filed at any time prior to five days preceding the day set for an election, but not afterwards.

From the above legislative revisions, it is obvious that the 1959 legislature liberalized the manner by which school bond elections might be initiated to allow school boards to call elections on bond issues without necessity for the filing of a petition.

The 1959 amendments provided an alternative means of initiating school bond elections but did not expressly amend the dates for conducting such elections. It is apparent that under both the former statutes, and the statutes as amended, a valid petition calling for a school bond election may be filed between January 15 and May 31, inclusive, and that the school board on receipt of such petition would have a reasonable time within which to meet and determine the sufficiency of such petition. If the board found the petition sufficient, then under Section 73-8-22, supra, it is required to order an election on the bond issue. **"Not less than thirty nor more than {*326} fifty days after such findings."** Thus, under prior and current law, the election on the bond issue could be called by the board after the date of May 31 of each year.

The basic question which must be resolved however, is whether a school board, if it calls an election on its own motion and without there first being filed with it a petition, must initiate its board resolution within the same restrictive time limits which are applicable to the filing of petitions.

Section 73-8-21, N.M.S.A., supra, requires that petitions asking for the calling of an election must be filed between **January 15 and May 31, inclusive, and at no other time.** In our opinion, this restriction on the filing of petitions is also applicable to calling

of a school bond election by a local board of education as an alternative method. A careful examination of the provisions of Laws 1959, Chapter 52, providing for the alternative method of initiating school bond elections, indicates that the legislature established an alternative means of initiating school elections but did not amend the statutory provisions restricting the times within which a school bond election might be initiated. In other words, the legislature permitted by its 1959 amendment school bond elections to be initiated by petition, or in the **alternative** on the board's own motion, but either alternative method of **initiating** a call for an election on school bonds must in our opinion be effected between the dates of January 15 and May 31 of each year.

In addition to the statutes cited above, Section 73-8-35, N.M.S.A., 1953 Compilation, states: "Provided, however, that bonds hereunder **shall not be issued or sold** after **July 1, in any calendar year** unless adequate levies have previously been made to meet interest payments and principal payments, if any, on such bonds for the first year after the date of issue."

The basis for requiring school bonds to be issued between January 1 and May 31, was examined in **Fisherick, et al. v. San Juan County Board of Education** (1925) 30 N.M. 454, 236 P. 743, wherein the court held that school bonds may not be issued after July 1 and before January 1 of the succeeding year. In this case the court stated:

"It is our conclusion that school bonds may not be issued after July 1 and before January 1 of the succeeding year; that the several statutory provisions referred to are intended to expedite the procedure so that they may be ready for issuance the same year in which voted, but that, if not so issued, in the absence of any other objection, they may be issued the succeeding year. In our view, it was not the legislative intent that the will of the electors, lawfully expressed, should be defeated by mere unavoidable delays or obstructionist tactics."

Based upon the above authorities, we therefore conclude that it is not required that an election be held upon the question of issuing school bonds between the dates of January 15 and May 31 of any given year, but it is necessary that either a petition calling for such election be filed, or a school board resolution calling for such election without such petitions being filed, be passed prior to May 31 of each year, in order that an election may be held upon the question of issuing such school bonds, and so that if such bond issue is approved by the voters such bonds may be issued prior to July 1 of that year.

By: Thomas A. Donnelly

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