

Opinion No. 64-142

November 23, 1964

BY: OPINION OF EARL E. HARTLEY, Attorney General Frank Bachicha, Jr., Assistant Attorney General

TO: Mrs. Alberta Miller, Secretary of State, Santa Fe, New Mexico

QUESTION

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Did Constitutional Amendment No. 7, submitted to the electors at the last general election held on Tuesday, November 3, 1964, amend, apply to or affect Article VII, Section 1, New Mexico Constitution?

CONCLUSION

No.

OPINION

ANALYSIS

Constitutional Amendment No. 7, voted upon at the last general election held on November 3, 1964, was proposed by joint resolution and was the Senate Rules Committee Substitute for House Joint Resolution No. 10 and House Joint Resolution No. 18, found at pages 1160-61 of the Laws of New Mexico, 1963. For the sake of clarity we set forth the whole of said Amendment as follows:

"CONSTITUTIONAL

AMENDMENT NO. 7

SENATE RULES COMMITTEE

SUBSTITUTE FOR

HOUSE JOINT RESOLUTION

NO. 10 AND HOUSE JOINT

RESOLUTION NO. 18

A JOINT RESOLUTION PROPOSING AN AMENDMENT TO ARTICLE 9, SECTION 12 OF THE CONSTITUTION OF NEW MEXICO TO ALLOW MUNICIPALITIES TO VOTE IN SPECIAL ELECTION ON QUESTION OF CREATING A DEBT AND TO PERMIT NONRESIDENT OWNERS OF PROPERTY IN A MUNICIPALITY TO VOTE ON CREATION OF DEBT.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. It is proposed to amend Article 9, Section 12 of the constitution of New Mexico to read:

"No city, town or village shall contract any debt except by an ordinance, which shall be irrevocable until the indebtedness therein provided for shall have been fully paid or discharged, and which shall specify the purposes to which the funds to be raised shall be applied, and which shall provide for the levy of a tax, not exceeding twelve mills on the dollar upon all taxable property within such city, town or village, sufficient to pay the interest on, and to extinguish the principal of, such debt within fifty years. The proceeds of such tax shall be applied only to the payment of such interest and principal. No such debt shall be created unless the question of incurring the same shall, at a regular election for councilmen, aldermen or other officers of such city, town or village **or at any special election called for such purpose**, have been submitted to a vote of such qualified electors thereof as have paid a property tax therein during the preceding year, and a majority of those voting on the question by ballot deposited in a separate ballot box **when voting in a regular election**, shall have voted in favor of creating such debt. **A proposal which does not receive the required number of votes for adoption at any special election called for that purpose, shall not be resubmitted in any special election within a period of one year. For the purpose, only, of voting on the creation of the debt, any person owning property within the corporate limits of the city, town or village who has paid a property tax therein during the preceding year and who is otherwise qualified to vote in the county where such city, town or village is situated shall be a qualified elector.**"

Section 2. The amendment proposed by this resolution shall be submitted to the people for their approval or rejection at the next general election or at any special election prior to that date which may be called for that purpose. (Emphasis Added)

The emphasized portion of Section 1 above as well as the whole of Section 2 represent the extent of the proposed Amendment to Article IX, Section 12 of the New Mexico Constitution.

Initially we might point out that except for certain specified provisions, the Constitution of New Mexico may be amended, pursuant to Article XIX, Section 1, New Mexico Constitution, if a majority of all members elected to each of the two houses shall vote in favor of the proposed amendment and the same is ratified by a **majority** of the electors voting upon such proposed amendment. The exceptions thereto are clearly set forth in the proviso contained in the said Article XIX, Section 1, as follows:

", . . . Provided, that no amendment shall **apply to or affect** the provisions of sections one and three of Article VII hereof, on elective franchise . . . **unless it be proposed by vote of three-fourths of the members elected to each house and be ratified by a vote of the people of this state in an election at which at least three-fourths of the electors voting in the whole state and at least two-thirds of those voting in each county in the state** shall vote for such amendment." (Emphasis supplied)

Section 3 of Article VII, New Mexico Constitution contains restrictive language of similar import, quoted below:

"Sec. 3. (Religious and racial equality protected -- Restrictions on amendments.) . . . and the provisions of this section and of section one of this article shall never be amended **except upon a vote of the people of this state in an election at which at least three fourths of the electors voting in the whole state, and at least two-thirds of those voting in each county of the state, shall vote for such an amendment.**" (Emphasis supplied)

Section 1 of Article VII, New Mexico Constitution, referred to in Section 3 quoted above as well as Article XIX, Section 1, supra, reads in pertinent part as follows:

"Section 1. (Qualification of Voters -- School elections -- Registration.)

Every . . . citizen . . . who is over the age of twenty-one years, and has resided in New Mexico twelve months, in the county ninety days, and in the precinct in which he offers to vote thirty days, next preceding the election, except idiots, insane persons, persons convicted of a felonious or infamous crime unless restored to political rights . . . **shall be qualified to vote at all elections for public officers. . . .**" (Emphasis Supplied)

The foregoing gives us the necessary background information, and we can then proceed to examine the basic question. The suspicion that the subject proposed Amendment No. 7 might amend, apply to or affect Article VII, Section 1, supra, arises from the following language of that proposed amendment: "For the purpose, only, of voting on the creation of the debt, **any person owning property within the corporate limits of the city, town, or village who has paid a property tax therein during the preceding year and who is otherwise qualified to vote in the county where such city, town or village is situated** shall be a qualified elector." (Emphasis supplied.)

It is to be noted primarily that compliance with the conditions prescribed in Article VII, Section 1, supra, will render a person "qualified to vote at all elections for public officers." Certainly it cannot be said that an election, pursuant to Article IX, Section 12 on the question of municipal indebtedness is an election for public officers. However, we are faced with the problem of determining the extent to which the provisions of Article VII, Section 1, supra, are controlling upon or restrict the subsequent establishment of qualifications, either more or less strict, for persons voting in elections other than for public officers.

Clearly, the proposed Constitutional Amendment No. 7 would allow voting by resident property owners, complying with the taxpaying qualifications, as well as non-resident property owners who were otherwise qualified to vote in the county where the city, town or village was situated, and who likewise complied with the taxpaying qualification. This means, necessarily, that some of the voters would be resident in precincts other than that at which their votes were cast upon the question of municipal indebtedness. Our New Mexico Supreme Court has in various instances, in construing Article VII, Section 1, *supra*, held that a vote cast outside the residence of the voter was void and that it must be cast in person in the precinct in which the voter has resided for the preceding thirty days. See **Thompson v. Scheier**, 40 N.M. 199, 57 P. 2d 293 (1936); **Chase v. Lujan**, 48 N.M. 261, 149 P. 2d 1003 (1944); **Arledge v. Mabry**, 52 N.M. 303, 197 P. 2d 884 (1948); **State ex rel. Board of County Commissioners of Quay County**, 59 N.M. 9, 277 P. 2d 960 (1954).

The first three of the above cited cases involved questions concerning elections of public officers and, therefore, the provisions of Article VII, Section 1, *supra*, were strictly applicable therein. The last case cited, however, involved an election to determine annexation of a portion of Harding County to Quay County. The issue presented in that case, pertinent to our present inquiry, was whether voters resident in one of the precincts affected could legally cast their votes in the other precinct, since only one polling place was established. First of all the Court considered the language contained in Article VII, Section 1, *supra*, as well as that of certain applicable provisions of our election code now compiled as Sections 3-1-1, 3-2-5, 3-2-47, 3-2-49 and 3-7-1, N.M.S.A., 1953 Compilation. There has been no material change in the provisions of these Sections since the date of that Supreme Court Opinion. Of special interest are the following provisions:

"3-1-1. Definitions. -- . . .

As used in this act, unless the context requires otherwise: The words 'Qualified elector,' . . . means any citizen of the United States who at the date of the election will be over the age of twenty-one (21) years and will have resided in the state twelve (12) months, in the county ninety (90) days **and in the precinct in which he offers to vote thirty (30) days, next preceding the election.** . . .

3-2-5. Registration -- Definitions. -- As used in this act . . .

The word 'election' shall be construed to mean and apply to all primary elections, general elections, special elections and **municipal elections.**

3-2-49. Registration required. -- No person shall vote at any general, special, primary, or municipal election unless registered as provided by the laws of the state of New Mexico and **unless otherwise qualified as herein provided.** . . ." (Emphasis supplied).

Note that the emphasized portion in Section 3-1-1, *supra*, is identical to that found in Article VII, Section 1, with respect to the residence requirements. The Court in **State v.**

Board of Commissioners, supra, was not presented with the question of the applicability of Article VII, Section 1, supra, to elections other than those for public officers. Neither was such determination necessary to the conclusion reached in that case, simply because the adoption by the legislature of identical voting qualifications as those imposed by the constitution permitted the court to apply to the above quoted Section 3-1-1, the same construction theretofore given Article VII, Section 1. We believe that the statutes involved in that case form the real basis for that opinion and that, therefore, such case is not applicable to our present inquiry, where we must determine the relationship between two constitutional provisions.

In **Lanigan v. Gallup**, 17 N.M. 627, 131 P. 997, it was stated:

"The rules which courts must observe in construing legislative enactments apply equally to constitutional provisions. . . ."

This pronouncement then permits us to refer to certain well established rules of statutory construction in determining the question before us. Of primary importance is the rule that the courts are reluctant to strike down a statute as unconstitutional, **Fowler v. Corlett**, 56 N.M. 430, 244 P. 2d 1122. Further, a statute is presumed to be valid and constitutional. **State ex rel. Dickson v. Saiz**, 62 N.M. 227, 308 P. 2d 205; **State ex rel. City of Albuquerque v. Lavender**, 69 N.M. 220, 365 P. 2d 652. Next it is proclaimed that unless there is ambiguity in a statute, construction is uncalled for, and that in the absence of anything in the context to the contrary, common or popular words are to be understood in the popular sense. **Atlantic Oil Producing Co. v. Crile**, 34 N.M. 650, 287 P. 696; **Albuquerque Lumber Co. v. Bureau of Revenue of New Mexico**, 42 N.M. 58, 75 P. 2d 334; **State v. Martinez**, 48 N.M. 232, 149 P. 2d 124; **Universal Credit Co. v. Printy**, 45 N.M. 549, 119 P. 2d 108; **Griffith v. Humble**, 46 N.M. 113, 122 P. 2d 134. On the other hand, it is said that statutes will be construed according to spirit or reason, where adherence to the strict letter would lead to absurdity, injustice, or contradiction. **State v. Southern Pac. Co.**, 34 N.M. 306, 281 P. 29. While we are not concerned here with a repeal, the courts say that because repeals by implication are not favored, a statute will not be construed as repealing an existing law unless no other construction can be placed on such statute. Therefore the construction which will permit both provisions to operate harmoniously is favored. **Heirich v. Howe**, 50 N.M. 90, 171 P. 2d 312; **James v. Board of Comm'rs of Socorro County**, 24 N.M. 509, 174 P. 1001.

Applying the above rules to our present situation, we see that Article VII, Section 1, supra, is not ambiguous, thus it is not open to construction. By its plain language its provisions are applicable to "elections for public officers." We cannot ignore this clear mandate; neither can we extend this meaning to include any and all elections, since such could have been plainly expressed if it had been intended. Evidence of the intent to make the subject Amendment applicable only to Article 9, Section 12 of the Constitution of New Mexico, is reflected in the title of such proposed Amendment. It is our opinion that the two provisions, i.e., Article VII, Section 1 and the proposed Constitutional Amendment No. 7, can be construed to operate harmoniously and that

such construction will produce neither absurd nor unjust results. The former would apply to all elections for public officers; the latter would apply, as its language directs, "For the purpose, only, of voting on the creation of the debt." The presumption that the Amendment in question herein is valid, cannot reasonably be overcome.

We conclude therefore, based upon our analysis above, that the proposed Constitutional Amendment No. 7 neither amends, applies to nor affects the provisions of Article VII, Section 1, supra. Thus, the provisions requiring an extraordinary majority of votes, viz., Article XIX, Section 1, supra, and Article VII, Section 3, supra, for certain constitutional amendments, are not applicable in this instance. A simple majority of the electors voting upon such proposed amendment, who cast their vote **for** such Amendment, was sufficient to insure its approval, pursuant to the requirements of Article XIX, Section 1, supra.