

Opinion No. 69-15

February 26, 1969

BY: OPINION OF JAMES A. MALONEY, Attorney General Justin Reid, Assistant Attorney General

TO: Mr. Edward R. Pearson, Attorney, New Mexico Legislative Council, 334 State Capitol, Santa Fe, New Mexico 87501

QUESTIONS

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Are school districts limited in tax levies to the 5% per annum increase in tax rates provided for in Sections 72-4-9 and 72-4-10, New Mexico Statutes Annotated, 1953 Compilation?

CONCLUSION

Yes.

OPINION

{*21} ANALYSIS

Section 72-4-9, as originally enacted in Laws 1921, Chapter 133, Section 310, applied to school districts.

"Section 310. Tax Rate Limited to Five Per Cent Increase Each Year.

No county, city, town, village or **school district** shall in any year make tax levies which will in any such county, city, town, village or **school district**,, produce on the face of the tax roll, an amount more than five per cent in excess of the amount produced on the face of the tax roll by tax levies therein during the year preceding, except as hereinafter provided." (Emphasis added)

Section 311, as amended, of the same enactment (§ 72-4-10, New Mexico Statutes Annotated, 1953 Compilation) provides for a means for exceeding the 5% limitation with approval of the State Tax Commission after hearing. However, the legislature in Laws 1923, Chapter 148, Section 1431 attempted to eliminate so much of Sections 310 and 311 as referred to schools.

"Section 1431. The following laws are hereby repealed: . . . Laws of 1921 . . . and so much of Section 310 and 311, Chapter 133 . . . as refers to schools . . ."

Article 4 Section 18 of the Constitution of New Mexico provides, in pertinent part:

"No law shall be revised or amended, or the provisions thereof extended by reference {*22} to its title only; but each section thereof as revised, amended or extended shall be set out in full."

It is clear that the action of the Legislature in attempting to repeal a portion of an existing law was "revising" or "amending" the law. Since this was done only by reference to the title of the law, the attempted partial repeal violated the quoted part of our Constitution and was at that time of no force and effect.

In the codification of New Mexico laws in 1929, these provisions appear as C.S. 1929, §§ 141-309 and 141-310. Section 141-309 includes "school districts" as did the original enactment. The compiler of our statutes in 1941 omitted "school districts" based on the assumed effect of the 1923 attempt to repeal part of the law.

Based on this analysis, it is the opinion of this office that §§ 72-4-9 and 72-4-10, supra, as originally enacted have not been specifically amended to exclude school districts. We express no opinion at this time as to whether the 5% limitation has been impliedly affected by other legislation or court decisions, for example in the area of reappraisal.