Opinion No. 71-117

November 18, 1971

BY: OPINION OF DAVID L. NORVELL, Attorney General

TO: The Honorable Lenton Malry New Mexico State Representative 2900 Hyder, S.E. Albuquerque, New Mexico

QUESTIONS

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What effect, if any, does the Age of Majority Act, Section 13-13-1, N.M.S.A., 1953 Comp. (1971 P.S.) have on the New Mexico's Board of Educational Finance's "Definition of Resident and Non-resident Student, for purposes of Tuition Fee Collection"?

CONCLUSION

See analysis.

OPINION

*{*176}* **ANALYSIS**

Chapter 287, Section 12, New Mexico Laws 1955 -- that act commonly known as the Appropriation Act -- stated in part:

". . . that the Board of Educational Finance shall define resident and non-resident students for the purpose of administering tuition fees, in accordance with the Constitution and **Statutes** of the State of New Mexico, and after consultation with the appropriate officials of the institution concerned, and each of said institutions shall use the definitions so established in assessing and collecting tuition fees from students." (Emphasis added.)

Prior to 1955, the Legislature had defined "resident and non-resident" for the purposes of administering tuition fees, but from 1955 until 1971, the Legislature adopted identical language to that quoted above in each subsequent Appropriation Act. In 1971 the Legislature again adopted identical language now found in Section 13-30-2.2(E), N.M.S.A., 1953 Comp. (1971 P.S.).

Attorney General Opinion No. 58-68, issued April 1, 1958 concluded that the Legislature's delegating such authority to the Board of Educational Finance was not an unconstitutional delegation of legislative powers. That Opinion set guidelines for such definitions, pursuant to which the Board of Educational Finance adopted the "Definition

of Resident and Non-resident Student, for Purposes of Tuition Fee Collection." These definitions are in effect today, and the question posed relates to their legality in view of the Age of Majority Act (adopted as Chapter 213, Laws of 1971) and now codified in Section 13-13-1, N.M.S.A., 1953 Comp. (1971 P.S.). Thus posed, the question raises other issues which must be resolved before the question itself can be answered.

First, it is to be noted that the age of majority under the common law was 21 years of age. However, as stated in **State Highway Comm'n v. Southern Union Gas Co.,** 65 N.M. 84:

"It is beyond question that the common law is subject to change by statute. That such change may not offend the Constitution is equally true." at p. 96.

One provision in the New Mexico Constitution which the Age of Majority Act might contravene in changing the common law age of 21 is Article VII, Section 1 which states in part:

"Every citizen of the United States, who is over the age of 21 years . . . shall be qualified to vote at all elections for public officers . . ."

But in this regard, it must be noted *{*177}* first, that the 26th Amendment to the United States Constitution has superseded this provision; and secondly, the Age of Majority Act specifically excludes "any age requirements for exercising the elective franchise."

The other is Article IV, Section 24 which states:

"The legislature shall not pass local or special laws in any of the following cases: . . . declaring any person of age . . ."

But it is our opinion that the Age of Majority Act does not contravene this section because "it applies to and affects alike, all persons and things of the same class." **Taylor v. Mirabal,** 33 N.M. 553, 273 P. 928 (1928).

Consequently, we conclude that the Age of Majority Act is consistent with the Constitution. See Attorney General Opinion No. 71-89 (issued July 19, 1971).

Proceeding then, the relationship of this act with regards to its effect on other laws must be resolved. Article IV, Section 18 of the New Mexico Constitution states in part:

" **No law** shall be revised or amended, or the provisions thereof extended by reference to its title only: but each section thereof as revised, amended or extended shall be set out in full . . ." (Emphasis added.)

As we have already seen, the Board of Educational Finance has been delegated the responsibility to promulgate definitions and as such, these definitions have the force of law, see **Goldenberg v. Village of Capitan,** 55 N.M. 122, 227 P.2d 630 (1951) and

Brininstool v. New Mexico State Bd. of Regents; 81 N.M. 319, 466 P.2d 885 (Ct. App. 1970). However, it is our opinion that a reasonable interpretation of Article IV, Section 18, **supra,** is that the section is directed only to amending or revising statutory laws and not to amending or revising those administrative rules which have the "force of law." Otherwise the legislative process would become even more tedious and cumbersome than it is presently, because if such a reasonable interpretation is not given that section, we can visualize situations in which an act attempts to amend another act but is stricken down because it fails to amend specifically some rule adopted under the amended act.

Combining the above with the traditions that "every presumption is ordinarily to be indulged in favor of validity and regularity of legislative enactments" **Fellows v. Schultz,** 81 N.M. 496, 469 P.2d 141 (1970) and that "a part of a law may be invalid and the remainder valid, where the invalid part may be separated from other portions," **Bradbury & Stamm Const. Co. v. Bureau of Revenue,** 70 N.M. 226, 372 P.2d 808 (1962), it is our opinion that the Age of Majority Act is constitutional insofar as it affects the Board of Educational Finance's "Definitions of Resident and Non-resident Student, for Purposes of Tuition Fee Collection."

Applying, therefore, the Age of Majority Act in the Board's definitions, we immediately note that the definitions distinguish between adults and minors on the basis of age 21. Inasmuch as the state law now is that ". . . any person who has reached his eighteenth birthday shall be considered to have reached his majority **and is an adult** for all purposes . . .", Section 13-13-1(A) (1), **supra,** it is our opinion that the Board of Educational Finance can no longer define an adult as one being over 21 years of age nor define a minor as one being under 21 years of age.

This does not mean that the Legislature and the Board of Educational Finance can no longer make a distinction between residents and nonresidents for tuition purposes. See **Starns v. Malkerson,** 326 F. Supp. 234 (D. Minn. 1970), aff'd without opinion, 401 U.S. 985, 91 S. Ct. 1231, 28 L. Ed. 2d 527 (1971) in which the United States Supreme Court approved such a distinction for tuition purposes. But it is our opinion that so long as the Board of Educational Finance continues to make its basic distinction of resident and non-resident with reference to majority-minority status, it must do so at the age eighteen. Consequently, if the Board retains its "adult-minor" distinction no institution can apply a different criteria to the eighteen to *{*178}* twenty year old student's application than it does the application of a 21 year old student or of a 30 year old student in determining if that student is a resident for tuition purposes.

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