

Opinion No. 75-56

October 8, 1975

OPINION OF: TONEY ANAYA, Attorney General

BY: W. Royer, Assistant Attorney General

TO: Vincent J. Montoya Executive Officer State Board of Finance 421 State Capitol Building Santa Fe, New Mexico 87503

QUESTIONS

1. Are municipalities, other than home rule municipalities, chartered municipalities and incorporated counties, subject to the interest rate policy established by the Board of Finance pursuant to Section 11-2-27, NMSA, 1953 Comp. (1975 Interim Supp.)?
2. Are home rule municipalities subject to the interest rate policy established by the Board of Finance pursuant to Section 11-2-27, NMSA, 1953 Comp. (1975 Interim Supp.)?
3. Are chartered municipalities subject to the interest rate policy established by the Board of Finance pursuant to Section 11-2-27, NMSA, 1953 Comp. (1975 Interim Supp.)?
4. Are incorporated counties subject to the interest rate policy established by the Board of Finance pursuant to Section 11-2-27, NMSA, 1953 Comp. (1975 Interim Supp.)?
5. Are local public bodies, other than municipalities, home rule municipalities, chartered municipalities, and incorporated counties, subject to the interest rate policy established by the Board of Finance pursuant to Section 11-2-27, NMSA, 1953 Comp. (1975 Interim Supp.)?

CONCLUSIONS

1. Yes.
2. No.
3. Yes.

OPINION

3. **Chartered Municipalities -- Silver City and Las Vegas.**

Silver City: The Town of Silver City, New Mexico is unique in that it is incorporated pursuant to state statute. Silver City does not have a charter **per se**. Silver City was first incorporated as a body politic and corporate under Chapter 54, Laws of 1876, by the Territorial Legislature of New Mexico. Chapter 54, Laws of 1876, was entitled "AN ACT to incorporate the town of Silver City in the County of Grant."

In 1878, the Territorial Legislature repealed Chapter 54, Laws of 1876 by Article VIII, Section 9, Chapter 38, Laws of 1878. Chapter 38, Laws of 1878 was also entitled "AN ACT to incorporate the town of Silver City in the county of Grant" and incorporated Silver City as a body politic and corporate. No mention is made of the town having been granted a charter.

In 1882, the Territorial Legislature enacted Chapter 75, Laws of 1882, entitled "AN ACT to amend the charter of the Town of Silver [City]), in the county of Grant." This is the first use of the word "charter" with reference to the Town of Silver City. In 1884, Chapter 95, Laws of 1884, amended Chapter 75, Laws of 1882, it also referred to a "charter".

Chapter 94, Laws of 1884, also amended Chapter 38, Laws of 1878, and referred to the Charter of the Town of Silver City. (The first, and only, codification of the foregoing acts appears in Local and Special Laws of New Mexico, 1884, Grant County, Chapters VI, VII, IX, XII, and XIII.

In 1889, Chapter 94, Laws of 1884, was repealed the Chapter 31, Laws of 1889. Chapter 31, Laws of 1889, reverts to the designation of "an act to incorporate" rather than "an act to amend the charter". This leaves only Chapter 75, Laws of 1882, and Chapter 95, Laws of 1884 referring to a "charter". The basic act, Chapter 38, Laws of 1878, remains the basis of the incorporated town of Silver City.

Chapter 38, Laws of 1878, was again amended by Chapter 25, Laws of 1907. It too referred to the "act to incorporate the town of Silver City."

The Territorial statutes governing Silver City became statutes of the State of New Mexico upon statehood through Article XXII, Section 4, of the Constitution of New Mexico. It provides:

All laws of the territory of New Mexico in force at the time of its admission into the Union as a state, not inconsistent with this Constitution, shall be and remain in force as the laws of the state until they expire by their own limitation, or are altered or repealed; and all rights, actions, claims, contracts, liabilities and obligations, shall continue and remain unaffected by the change in the form of government.

The 1915 codification of the New Mexico Laws omitted the acts pertaining to Silver City, but the "Repealing and Saving Clause" specifically states:

. . . no existing municipal corporation shall be disincorporated or its right, powers or duties in any wise affected by the omission {**153*} from this codification of the act, whether general or special, under which it was incorporated.

Therefore, Silver City exists pursuant to a state statute rather than a charter, and it has only the powers granted to it by the statutes creating it and the general provisions applying to municipalities.

We have reviewed the statutes which create the Town of Silver City; the statutes do not contain a provision that would allow the governing body of Silver City to establish an interest rate policy for time deposits of municipal funds. Therefore, it is our opinion that the interest rate policy established by the Board of Finance applies to such deposits by the Town of Silver City pursuant to Sections 11-2-27, **supra**, and 11-2-33, **supra**.

Las Vegas: The cities of West Las Vegas and East Las Vegas, New Mexico, were consolidated pursuant to Section 14-5-1, NMSA, 1953 Comp. The consolidation included the adoption of a charter pursuant to Sections 14-14-1 **et seq.**, NMSA, 1953 Comp. Section 14-14-11, **supra**, provides:

A municipality organized under the provisions of sections 14-14-1 through 14-14-14, New Mexico Statutes Annotated, 1953 Compilation, shall be governed by the provisions of the charter adopted pursuant to sections 14-14-1 through 14-14-14, New Mexico Statutes Annotated, 1953 Compilation, and no law relating to municipalities inconsistent with the provisions of the charter shall apply to any such municipality.

We have reviewed the Charter of the City of Las Vegas, New Mexico, and find that the charter does not contain specific authorization to establish an interest rate policy for time deposits of municipal funds. Therefore, there being no conflict between the statutes relating to municipalities and the charter, the City of Las Vegas is subject to the provisions of Section 11-2-33, **supra**, and the interest rate policy established by the Board of Finance.

4. Incorporated Counties -- Los Alamos

Los Alamos County is incorporated pursuant to Article X, Section 5 of the New Mexico Constitution. Article X, Section 5, provides in part:

The charter of an incorporated county shall provide for the form and organization of the incorporated county government and shall designate those officers which shall be elected, and those officers and employees which shall perform the duties assigned by law to county officers.

An incorporated county may exercise all powers and shall be subject to all limitations granted to municipalities by article 9, section 12 of the Constitution of New Mexico and all powers granted to municipalities by statute.

The New Mexico statutes grant to a municipality the right of the charter to control over inconsistent statutory provisions pertaining to municipalities in general. See 14-14-11, **supra**. Therefore, if the Charter of the Incorporated County of Los Alamos contains a provision allowing the governing body to establish an interest rate policy, the charter provision would prevail over Section 11-2-27, **supra**.

{*154} We have reviewed the Los Alamos Charter and find only one provision relating to the investment of public moneys. Article V, **Utilities**, Section 508 provides:

The Board shall have the right to invest the reserve and contingency funds of the Department in accordance with laws and statutes of the State of New Mexico governing investment of public funds by local governing boards and bodies.

Two factors contribute to our opinion that Los Alamos County is subject to the investment rate policy established by the Board of Finance pursuant to Section 11-2-27, **supra**. The Charter does not contain a general provision allowing the County Council to establish an interest rate policy for time deposits. Thus, there is no conflict between the Charter and Section 11-2-27, **supra**. Secondly, in the specific instance in which the Charter deals with the investment of public funds, it requires that such investments be made in accordance with the laws governing the investment of public funds by local governing boards and bodies, including Sections 11-2-27 and 11-2-33, **supra**. Therefore, it is our opinion that the County of Los Alamos is subject to the interest rate policy established by the Board of Finance.

5. Other Local Public Bodies.

"Local public body" is defined in Section 11-2-56, NMSA, 1953 Comp. It provides:

"Local public body" means every political subdivision of the state which expends public money from whatever source derived, including but not limited to counties, county institutions, boards, bureaus or commissions; incorporated cities, towns or villages; drainage, conservancy, irrigation or their [other] districts; charitable institutions for which an appropriation is made by the legislature and every office or officer of any of the above. "Local public body" does not include county, municipal, consolidated, union or rural school districts and their officers, or irrigation districts organized under sections 75-23-1 through 75-23-45, New Mexico Statutes Annotated, 1953 Compilation.

The deposits of counties and municipalities are specifically addressed in Section 11-2-33, *supra*. In addition, Section 11-2-33, *supra*, applies to "boards of control"; however, "board of control" is nowhere defined in the statutes. The closest reference to a board of control is found in Section 11-2-6, NMSA, 1953 Comp; it provides:

The **boards in control** of the various public and educational institutions in this state, **and all other boards handling funds in any manner whatever**, except local boards of education, **are hereby designated as boards of finance for such institutions and boards respectively**. Each of such boards shall receive, handle and account, as

provided by law, for all public moneys received by it, and shall deposit the funds of such institutions or boards in a depository or depositories qualified in accordance with the requirements of this act [11-2-4, 11-2-6, 11-2-7, 11-2-17, 11-2-19, 11-2-20, 11-2-51], equitably and upon the terms and conditions and in like manner and subject to such limitations as in this act prescribed for the deposit of public moneys by other boards of finance. (Emphasis added.)

{*155} We note that "board of control" is used several times in the statutes governing public funds.

It is our opinion that a "board of control" is the board of finance for any governmental or public entity created by the Constitution or by statute. A local public body, as defined in Section 11-2-56, **supra**, by definition handles public funds and is created by either the Constitution or by statute. Therefore, it is our opinion that the board of finance of any local public body is governed by Section 11-2-33, **supra**. As such, local public bodies are subject to the interest rate policy established by the Board of Finance pursuant to Section 11-2-27, **supra**.