

Opinion No. 88-55

September 12, 1988

OPINION OF: HAL STRATTON, Attorney General

BY: Scott Spencer, Assistant Attorney General

TO: The Honorable Louis Sanchez, State Representative, Rio Arriba County, District 41, P.O. Box 3485, Fairview, New Mexico 87533

QUESTIONS

1. May a contract between a local school board and a certified school administrator provide that a specific salary be paid to the school administrator the second year of the contract, in light of the statutory prohibition against committing funds beyond the current fiscal year?
2. May a two-year contract between a local school board and a certified school administrator be extended for an additional year in light of Section 22-10-11 NMSA 1978, which states that a school administrator's contract may not exceed two years?

CONCLUSIONS

1. See analysis.
2. No.

ANALYSIS

1. Section 6-6-11 of the Bateman Act, Sections 6-6-11 to 6-6-18 NMSA 1978 (Repl. 1987), provides:

It is unlawful for any board of county commissioners, municipal governing body or any local school board, for any purpose whatever to become indebted or contract any debts of any kind or nature whatsoever during any current year which, at the end of such current year, is not and cannot then be paid out of the money actually collected and belonging to that current year, and any indebtedness for any current year which is not paid and cannot be paid, as above provided for, is void. Any officer of any county, municipality, school district or local school board, who shall issue any certificate or other form of approval of indebtedness separate from the account filed in the first place or who shall at any time use the funds belonging to any current year for any other purpose than paying the current expenses of that year, or who shall violate any of the provisions of this section, is guilty of a misdemeanor.

Section 6-6-12 excepts certain agreements from the scope of Section 6-6-11:

Insurance contracts not exceeding five years, lease purchase agreements, lease agreements and contracts providing for the operation, or provision and operation, of a jail by an independent contractor entered into by a local public body set out in Section 6-6-11 NMSA 1978, are exempt from the provisions of Section 6-6-11 NMSA 1978, and such contracts, lease purchase agreements, lease agreements and jail contracts are declared not to constitute the creation of debt.

Section 6-6-12 does not except an employment contract between a local school board and a school administrator. Therefore such an agreement would be subject to the requirements of Section 6-6-11.

The Bateman Act requires local governing bodies to live within their annual incomes. *City of Hobbs v. State ex rel. Reynolds*, 82 N.M. 102, 476 P.2d 500, (1970). When a local governing body enters into a contract, it must commit funds belonging to the current year to cover the debt the contract creates. Thus, in *Optic Publishing Co. v. Board of County Comm'rs*, 27 N.M. 371, 202 P. 124 (1921), the Commission created a debt in a year where there was no money available or made available to pay it. The court held that the Commission could not pay the debt out of the next year's funds. In contrast, in *Neal v. Board of Education*, 40 N.M. 13, 52 P.2d 614 (1935), the court determined that the board had to honor a bill for attorneys fees for services rendered in 1931, because funds were available in 1931 to pay it. Accord, *McMurtry v. City of Raton*, 66 N.M. 277, 347 P.2d 168 (1959) (contractor permitted to recover against city for building a public pool, where funds were available in year of contract to pay the bill); *Cathey v. City of Hobbs*, 85 N.M. 1, 508 P.2d 1298 (1973) (court enforced debt for engineering services, because the City would have paid debt from funds available at the end of the fiscal year in which debt incurred).

The Bateman Act prohibits a local governing body from entering into a contract that neither expressly nor implicitly requires funds from future years to meet the payments required by the contract. In *Atty. Gen. Op. 83-5* (1983), this office concluded that local governments could not enter into a lease that required payments for twenty-five years. The lease payments were based on services rendered in future years, and therefore could not necessarily be paid out of the current year's funds. Similarly, in *Atty. Gen. Op. 69-17* (1969), this office concluded that a two-year contract for school yearbooks violated the Act. The contract required the school board to make payments when it ordered the books, and the amount of the payment could be determined only upon ordering and not at the time of contracting.

Based on these authorities, we conclude that a contract between a local school board and a school administrator may provide for a specific salary during the second year of the contract term without violating the Bateman Act but only if the board commits funds from the fiscal year of contracting to pay the salaries for both years and funds from any other fiscal year are not necessary to pay the salaries.

2. Section 22-10-11(B) NMSA 1978 provides:

All employment contracts between local school boards and certified school personnel and between governing authorities of state agencies and certified school instructors shall be for a period of one school year except:

1. contracts for less than one school year are permitted to fill personnel vacancies which occur during the school year;
2. contracts for the remainder of a school year are permitted to staff programs when the availability of funds for the programs is not known until after the beginning of the school year;
3. contracts for less than one school year are permitted to staff summer school programs and to staff federally funded programs in which the federally approved programs are specified to be conducted for less than one school year;
4. contracts not to exceed two years are permitted for certified school administrators in public schools who are engaged in administrative functions for more than one-half of their employment time; and
5. contracts not to exceed three years are permitted at the discretion of the local school board for certified school instructors in public schools who have been employed in the school district for three consecutive school years.

"Certified school personnel," as used in this section, includes a certified school administrator. Sections 22-10-3 and 22-10-5 NMSA 1978. Unless a particular school administrator falls within one of the first four exceptions, the term of his contract with the local school board must be for one year. Note that even if a certified school administrator is also a certified school instructor, Subsection 22-10-11(5) permits a contract with a three-year term only if the board employs him as an instructor. Consequently, a local school board may not extend a school administrator's two-year contract for an additional year.

ATTORNEY GENERAL

HAL STRATTON Attorney General