

Opinion No. 88-53

August 15, 1988

OPINION OF: HAL STRATTON, Attorney General

BY: Andrea R. Buzzard, Assistant Attorney General

TO: Honorable William P. Vandergriff, State Senator, P.O. Box 176, La Luz, New Mexico 88337

QUESTIONS

May the Alamogordo Municipal Schools conduct a bond election in February, 1989, on the question described below without violating Section 22-18-8 NMSA 1978 (Repl. 1986)?

CONCLUSIONS

Yes.

ANALYSIS

In May, 1987, Alamogordo voters defeated the following question about the school district's general obligation bond issue:

Shall the Board of Education of Alamogordo Municipal Schools District No. 1, Otero County, New Mexico, be authorized to issue general obligation bonds of the District, in one series or more in an aggregate principal amount not exceeding \$10,000,000, for the purpose of erecting, remodeling, making additions to, and furnishing school buildings, and purchasing and improving school grounds, said bonds to be payable from general (ad valorem) taxes, and to be issued and sold at such time or times and upon such terms and conditions as the Board may determine?

The district proposes to submit the following question to the voters in February, 1989:

Shall the Board of Education of Alamogordo Municipal School District No. 1, Otero County New Mexico, be authorized to issue general obligation bonds of the District, in one series or more in an aggregate amount not exceeding \$6,000,000, for the purpose of erecting and furnishing an addition to the Alamogordo High School, thereby making it a four year high school; said bonds to be payable from general (ad valorem) taxes, and to be issued and sold at such time or times and upon such terms and conditions as the Board may determine?

Sections 22-18-1 to 22-18-12 NMSA 1978 (Repl. 1986) authorize school districts to issue general obligation bonds. Section 22-18-1 provides:

Subject to the provisions of Article 9, Section 11 of the constitution of New Mexico and Section 6-15-1 and 6-15-2 NMSA 1978, a school district may issue general obligation bonds for the purpose of erecting, remodeling, making additions to and furnishing school buildings, or purchasing or improving school grounds or any combination of these purposes.

Section 22-18-2(A) provides:

Before any general obligation bonds are issued, a local school board of a school district shall submit to a vote of the qualified electors of the school district owning real estate in the school district the question of creating a debt by issuing the bonds and a majority of those persons voting on the question shall vote for issuing the general obligation bonds.

Section 22-18-5(A) provides: "The question on the ballot of creating a debt by issuing general obligation bonds shall state the purpose or purposes for which the bonds are to be issued and the amount of the bond issue." Section 22-18-8 provides:

In the event a majority of those persons voting on a question submitted to the voters in a bond election vote against creating a debt by issuing general obligation bonds, no bond election shall be held on the same question for a period of two years from the date of the bond election, except upon the presentation of a petition pursuant to Section 22-18-2 NMSA 1978 and after the expiration of at least six months from the date of the previous bond election on the question. If a majority of those persons voting on a question submitted to the voters in a bond election for a second time within two years vote against creating a debt by issuing general obligation bonds, no bond election shall then be held on the same question for a period of two years from the date of first bond election on the question.

(Emphasis added).

Because the proposed February, 1989 bond election would occur within two years of the May, 1987 bond election, the question is whether the proposed question is the "same question" for purposes of Section 22-18-8's prohibition. We conclude that it is not. The "question" on the ballot must state the purpose for which the bonds are to be sold and the amount of the bond issue. Section 22-18-5. The proposed "purpose" for the 1989 bond issue, building an addition to the high school, is more limited than the earlier defeated issue. The earlier election contemplated a broader purpose: erecting, remodeling, making additions to, and furnishing school buildings, and purchasing and improving school grounds. Also, the 1989 bond issue would create only \$6,000,000 in debt, while the 1987 question proposed \$10,000,000 in bonds. Thus, the obligation that the voters' property taxes must satisfy is less than the earlier proposal. See Section 22-18-12(C) ("The board of county commissioners shall levy and collect upon all taxable property within a school district in the county such tax as is necessary to pay the interest and principal on general obligation bonds issued by the school district....").

Other jurisdictions have concluded under similar circumstances that successive bond proposals did not involve the "same" question. In *Baird v. Independent School Dist. No. 3*, 622 P.2d 1072 (Okla. 1981), the Oklahoma Supreme Court held that a school district did not violate a school bond election statute prohibiting resubmission of the "same proposition" within four months. The voters had defeated a proposal to issue bonds in the amount of \$700,000 to construct a gymnasium and a new high school. Two months later, the school board held a new bond election on three separate bond proposals: \$50,000 to construct two elementary classrooms, \$280,000 to construct a new high school building, and \$390,000 to construct a new gymnasium. The voters approved all three propositions. The court stated: "The object of legislative interdiction of successive elections on the same issue is to protect the electorate from coercion and harassment through official "bombardment" with repeated attempts at securing the passage of previously defeated proposals by resubmitting them in unaltered form." *Id.* at 1075 (emphasis original). The court ruled the alternative proposals were not substantially identical to the earlier single issue:

By making available to the electors the unimpaired freedom to select from three distinct options, every voter came to be afforded the opportunity to reduce the economic effect of the proposed indebtedness and thus alter its tax incidence.... Neither can we say that the three alternatives which were adopted, viewed in the aggregate... were so coextensive in scope with the original submission as to afford the voter no more than a re-run of the same proposition. *Id.* at 1075.

In *Hawley v. Snider*, 346 Mich. 181, 77 N.W.2d 754 (1956), the Michigan Supreme Court ruled that a school district did not violate a statute prohibiting it from submitting within six months the "same question" on bonded indebtedness. The first question proposed issuing \$1,360,000 in bonds, while the second question sought voter approval for \$525,000 in bond. The first question proposed building a new high school, and the second proposed only remodeling the existing high school. The court stated: "There was a marked difference of \$835,000 in the amount of the bond issue[s] ... and, also, the items and purposes [of the two issues] ... were materially different...." *Id.* at 185, 77 N.W.2d at 756.

Because the Alamogordo school district's proposed February, 1989 bond question differs materially in amount of bonded indebtedness and in purpose, it is not the "same question" that the voters defeated in May, 1987. The proposed bond election, therefore, does not violate Section 22-18-8.

ATTORNEY GENERAL

HAL STRATTON Attorney General