

## Opinion No. 43-4215

January 16, 1943

**BY:** EDWARD P. CHASE, Attorney General

**TO:** Mr. C. R. Sebastian, State Comptroller, Santa Fe, New Mexico

We have your letter requesting an official opinion concerning the provisions of Section 10-507 of the 1941 New Mexico Statutes Annotated. You appear especially anxious for a ruling by this office, in view of the fact that under Section 10-508, 1941 New Mexico Statutes Annotated, an officer may be removed for failing or neglecting to properly comply with the above statute.

You also call our attention to Opinion No. 3097 given by this office under a former Attorney General. This opinion is a ruling on the identical statute that is now involved, and was given shortly after such section was passed by the Legislature. I have carefully gone over this opinion, and am forced to state that I am unable to concur in the result reached in such opinion.

Section 10-507 provides:

"On or before the 10th day of each month there shall be published by each board of county commissioners in this state, by council, commission or trustees of every city, town, or village in this state, and by every board of education in this state a full and complete list of expenditures made during the preceding calendar month and shall give the names of all persons, firms, corporations, associations or partnerships to which disbursements were made."

The above mentioned opinion, noting that this section merely provided that there shall be published, and did not provide how published, carefully went into the authorities concerning the meaning of the word "published," and found that a publication in the newspaper was not necessary. After carefully examining other provisions of our statutes, it is my opinion that this section must be construed in connection with Section 12-212, 1941 New Mexico Statutes Annotated, which provides:

"All publications of proceedings of boards of county commissioners, city and town councils, boards of trustees, (Boards of education or school directors) and of all other officers of any county, municipality, district or other subdivision of the state, which are required by law to be made shall be published once only. In all counties, cities, or towns, in which the publication (population) is not less than seventy-five (75) per cent English speaking, the publication of such notices in English shall be sufficient; that in all counties, cities, and towns, in which the population is not less than seventy-five (75) per cent Spanish speaking, the publication of such notices in the Spanish language shall be sufficient; that in all counties, cities and towns, in which the publication (population) using either language is between twenty-five (25) per cent and seventy-five (75) per

cent of the whole, such notices shall be published in both English and Spanish, provided, there be legal newspapers published in both languages in the county, city, or town, by different publishers, otherwise, publication in either language shall be sufficient."

In view of the above, it seems plain that it was the intent of the Legislature in enacting this section, to provide that publications required by boards of county commissioners, city and town councils, boards of trustees, (boards of education or school directors) and of all other officers of any county, municipality, district, or other subdivisions of the state shall be published in a legal newspaper, otherwise it would be immaterial whether or not there would be legal newspapers published in both languages in such county, city or town, etc. I also note that a part of the above act, which concerned the publication of school board proceedings, was repealed by Laws of 1923, Ch. 148, Section 1431, and are, therefore, enclosed in parenthesis, since such part is of no force and effect. It therefore seems clear that since a publication is required by Section 10-507 by each board of county commissioners in this state by the council, commission or trustees of every city, town, or village in this state, therefore publications as are required by law under Section 10-507 must be published in a legal newspaper under Section 12-212.

I further point out in this connection that Section 15-3508 of the 1941 New Mexico Statutes Annotated provides:

"The proceedings of the several boards of county commissioners shall be published within twenty (20) days after each meeting in some newspaper of general circulation, in the county in which such meeting is held, in English, such publication to be made but once."

Section 10-507 undoubtedly superseded so much of this section as provides for publication of so much of the proceedings as relates to expenditures within twenty (20) days. However, the rest of such section is in full force and effect and should also be construed in connection with Section 10-507, where the publication required in such Section, under Section 15-3508, must be published in some newspaper for general circulation.

This disposes of your entire question with the exception of the provision of 10-507 concerning publications for every board of education of this state, as above noted, Section 12-212 is not applicable to school boards, nor do we have any other specific provision of our law requiring that such publications be in the newspaper. However, it is pertinent to note that Section 12-209 provides:

"All publications required to be made by any county or incorporated city, town or village, or by any board of education or school directors, or by any officer thereof, shall be paid for out of the general fund of such county, city, town or village. Provided: that the cost of such publications pertaining to school matters shall be paid out of school funds."

Since this section, when read in connection with the preceding section of such chapter of the 1941 New Mexico Statutes Annotated, apparently refers to newspaper advertisements, therefore it was possibly the contemplation of the Legislature that such publications as are required by any board of education should be published in the newspaper and paid as therein provided. However, in view of the ambiguity of this section, it is impossible to definitely ascertain what our Supreme Court would construe this section as requiring.

Assuming, however, without holding, that a newspaper publication is not necessarily required, I refer to Opinion No. 3097 and quote:

"It follows, therefore, from the authorities cited that the various boards and commissions involved in Chapter 220 would be complying with Section 3 thereof **by giving notice to the public, by 'any means'**, of the information desired to be brought to its attention, namely, a full and complete list of expenditures made by such board or commission during the preceding calendar month."

The opinion then goes on to hold:

"This may be done by various means. One way, of course, would be by appropriate notice of expenditures printed in some newspaper circulated to the public. **Another way would be by posting of the list of expenditures in some public place such as at the county court-house door, or other bulletin board available to the public.**" (Emphasis mine.)

In view of this last paragraph above quoted, I am once more compelled to differ from the result therein obtained. As was correctly stated in such opinion, to have a publication, there must be a giving of notice to the public. Whether merely posting a bulletin would meet such requirement raises a difficult legal problem which, if decided in the negative, would result in the possible removal of an officer under Section 10-508, even though such officer was acting in good faith. We therefore strongly recommend that if the school boards should attempt to use some other means of making their publication than the newspapers, that the means adopted could reasonably be expected to receive general notice throughout the community, otherwise there would not be a sufficient publication.

It would appear to us, in view of the ambiguity of the provision relating to school boards, when considered in connection with the removal statute, that it would be advisable to submit this matter to the Legislature, since it is now in session, for an amendment which would clarify the law according to what the Legislature considers should be the policy of this State.

We further note that you ask a question concerning budgeting of the amounts to pay for newspaper publications when such newspaper publications are deemed necessary under the law. As previously pointed out in the above opinion, the provisions of Section 10-507, with the possible exception of Boards of Education, are mandatory. Therefore,

in my opinion, since this is a mandatory provision, that whatever funds are necessary to comply with the statute should be provided by the State Tax Commission when they make up their budget.

Hoping that the above answers your question, I am