

## Opinion No. 53-5656

February 2, 1953

**BY:** RICHARD H. ROBINSON, Attorney General

**TO:** Patrick F. Hanagan, Esquire District Attorney for the Fifth Judicial District Roswell, New Mexico

{\*43} This is in answer to your request for an opinion upon the question of whether or not the county commissioners, after having duly been presented with a petition for the erection of a county hospital and after having duly acted on the matter and published in accordance with law a notice of election upon this issue, they may then, prior to the election, consider splitting the proceeds of such bonded sums and erecting one hospital to be used by the osteopaths and one hospital to be used by the M.D.'s.

It is the opinion of this office that the county commissioners cannot split the proceeds of the sale of such bonds to be used for the erection of two hospitals. Under § 4, Ch. 148, Laws of 1947, State of New Mexico, § 15-5004 N.M.S.A., 1941 Comp., as amended, the procedure is outlined therein for such special election.

"Whenever a petition signed by not less than two hundred (200) qualified electors of any county in this state shall be presented to the board of county commissioners of the particular county, asking that a vote be taken on the question or proposition of constructing or purchasing a hospital and isolation ward and acquiring the land therefor, setting forth in general terms the **object of such petition** and the amount of bonds asked to be voted for, it shall be the duty of the board of county commissioners of such county to which said petition may be presented," etc. . . . "which notices shall set forth the time and place of holding such election, the hospital and isolation ward proposed to be build or purchased," . . . (Underlining supplied).

This particular statute has been upheld in the case of **Board of County Commissioners v. McCulloh, 52 N.M. 210, 195 P. 2d 1005**. In this respect the notice of such election and the issues to be voted upon contemplate proper publication and a variation from the text of the publication would be fatal to a proper bond election. **Orchard v. Board of Commissioners of Sierra County, 42 N.M. 172, 76 P. 2d 41.**

The constitutional provisions of Art. IX, § 10, New Mexico Constitution, although not specifying the exact procedure for conducting an election upon a bond issue do infer (by reference) proper notice to the voters before the election.

In summation, it is the opinion of this office that under the laws of the State of New Mexico, which require a specific procedure for notice of an election and holding of an election on a bond issue, any variance between the notice and the actual use of the funds would be fatal.

We trust that this answers your question.

By: William J. Torrington

Assist. Attorney General