

Opinion No. 55-6259

August 18, 1955

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. Charles D. Alsup, Assistant District Attorney, Eighth Judicial District, Clayton, New Mexico

Receipt is acknowledged of your letter dated August 12th in which you request an opinion as to whether the County or the Petitioners have to pay for the cost of an election under the Wind Erosion Act, being Sections 45-6-23 through 45-6-26, inclusive, N.M.S.A., 1953, Pocket Supplement.

Subsection (b) of Section 45-6-23, reads as follows:

". . . The board of county commissioners after determining that any such petition is in conformity with the requirements of subsection (a) of this section and upon payment by the petitioners of a sufficient sum to defray the cost shall order an election to be called on the question of the establishment of wind erosion district."

Subsection (i) of Section 45-6-24, reads as follows:

". . . (i) The expense of carrying out the provisions of this act shall be paid by said board of county commissioners out of the general funds of said county."

Subsection (b) of the above pertinent part of the statute is a specific provision and must be regarded as an exception to the general provision which is subsection (1) of the statute in question. Therefore the specific provision prevails over the general provision of the statute.

See 8 2 C.J.S., pages 720 to 722 under Statutes:

"Unless a legislative intention to the contrary clearly appears, special or particular provisions control over general provisions, terms or expressions. General and special provisions in a statute should stand together, if possible, and be read together and, if possible harmonized with a view to giving effect to a consistent legislative policy, Where, however, general provisions, terms or expressions in one part of a statute are inconsistent with more specific or particular provisions in another part, the particular provisions must govern or control as a clearer and more definite expression of the legislative will, unless the statute as a whole clearly shows a legislative intention to the contrary, or some other canon of statutory construction compels a contrary conclusion. This is true whether the special provisions precede or follows the general ones, and regardless of the otherwise proper construction of the general provisions. This rule has been held much more persuasive than the rule stated supra subdivisions a of this section, that the provision last in order of arrangement prevails. The specific provision

must be given effect notwithstanding the general provision is broad enough to include the subject to which the specific provisions relate. The particular provision should be regarded as an exception to the general provision so that both may be given effect, the general applying only when, or where, the particular enactment is inapplicable."

It is therefore the opinion of this office that in view of the authorities quoted above, that the County Commissioners must pay for the election expenses, but they must first secure funds sufficient to defray the actual cost of the election from the Petitioners.

Trusting that we have fully answered your inquiry, we remain

By: Hilario Rubio

Assistant Attorney General