

Opinion No. 60-163

September 20, 1960

BY: OPINION of HILTON A. DICKSON, JR., Attorney General

TO: Mr. Jack Love Assistant District Attorney Fifth Judicial District Lovington, New Mexico

QUESTION

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May the Hobbs Municipal Board of Education operate as its own board of finance independent of the county treasurer?

CONCLUSION

See analysis.

OPINION

{*551} **ANALYSIS**

The answer to your question requires consideration of the two {*552} following sections. Section 73-7-28, N.M.S.A., 1953 Comp., reads in part as follows:

"All school funds to the credit of any district shall be kept by the county treasurer and withdrawn only by warrant or voucher of the proper board of education, if and when the expense matures. . . ."

Section 11-2-6, N.M.S.A., 1953 Comp., reads in part as follows:

"The boards in control of the various public and educational institutions in this state, and all other boards handling public funds in any manner whatever, except county boards of education, boards of education of independent rural school districts, municipal boards of education of municipalities having less than 25,000 population according to the next preceding United States census and union high school boards, are hereby designated as boards of finance for such institutions and boards respectively. Each of such boards shall receive, handle and account, as provided by law, for all public moneys received by it, and shall deposit the funds of such institutions or boards in a depository or depositories qualified in accordance with the requirements of this act . . ."

Upon a first reading of these two sections, they give the appearance of being in conflict. Upon a closer examination, however, it would seem that the two can be reconciled. Sec. 73-7-28, supra, indicates that all school funds to the credit of any district shall be kept

by the county treasurer. This merely gives the county treasurer custodial care over these school funds. Sec. 11-2-6, supra, provides that municipal boards of education of municipalities having more than 25,000 population may operate as their own boards of finance. It is not necessarily inconsistent for one public official to act as custodian of funds and for another board or group of public officials to act as a board of finance having control over these funds. Included in the powers and duties of a board of education acting as a board of finance would be the right to designate depositories and exact security from such depositories. Another right would be the direction of investment of school funds. The board would still receive, handle and account for these public moneys but would turn them over to the county treasurer and direct the county treasurer to deposit the funds in such depositories as it may specify. There is no machinery established whereby the board of education could become custodian of these funds. There is no provision for the municipal board to be bonded to care for these funds. This line of reasoning was followed in the case of **State v. Fidelity & Deposit Co. of Maryland**, 36 N.M. 166, 9 P. 2d 700. In view of the long standing rule that repeals by implication are not favored and that two statutes must be reconciled if possible, we are led to the view that Sec. 11-2-6, supra, allows municipal boards of education of municipalities having a population in excess of 25,000 to operate as a municipal board of finance. This does not, however, in our view, allow the board to operate completely independent of the county treasurer since we feel Sec. 73-7-28, supra, still retains custodial care of the school funds in the county treasurer.

By: Boston E. Witt

Assistant Attorney General