

## **Opinion No. 61-77**

August 30, 1961

**BY:** OPINION OF EARL E. HARTLEY, Attorney General Boston E. Witt, First Assistant Attorney General

**TO:** Mr. Alexander F. Sceresse, District Attorney, Second Judicial District, Second Floor, Court House, Albuquerque, New Mexico

### **QUESTION**

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"1. Does the Local Government Division have the power under Sec. 11-2-57 to order suspension of disbursements of all moneys by a county if the county has not provided specific sums of money for an item in a proposed budget as demanded by the Local Government Division?

2. Does the Local Government Division have the power to suspend a public hearing on a proposed county budget if that budget is ready for inspection and review at the proper time and place as provided for by Sec. 11-2-57 because the board of county commissioners does not have a specific estimate for a budget item that is demanded by the Local Government Division?

3. Does the Local Government Division have the power under Sec. 11-2-57 to reclassify salaries of county elected officials as provided in Sec. 15-43-4.6 (third class county salaries) and provide salaries under Sec. 15-43-417 (fourth class county salaries) against the protests of the board of county commissioners and provided there are sufficient funds for these salaries in the proposed budget, the difference being that a lower sum was allocated to court house building repairs?

4. Can the board of county commissioners demand a new budget hearing be held to approve their original proposed budget based on the facts and interpretation of the law requested herein?"

#### **CONCLUSIONS**

1. See analysis.

2. See analysis.

3. See analysis.

4. See analysis.

## OPINION

### ANALYSIS

Sec. 11-2-57 prescribes the powers and duties of the Local Government Division of the State Department of Finance and Administration. That section, among other things, places the duty upon the Local Government Division to examine each proposed budget on or before the first of July of each year and approve and certify to the local public body in question an operating budget for use pending approval of the final budget. It places upon the Local Government Division the duty of holding public hearings on the proposed budgets. Under subsection D, it gives the Local Government Division the power to make corrections, revisions and amendments to proposed budgets as may be necessary to meet the requirements of law.

The answer to your first question involves the question of whether the specific line item in the recommended budget that is being required by the Local Government Division is an expenditure of funds to meet the requirements of law. It is our understanding that had the Local Government Division not demanded a large increase in the line item for court house repair, there would have been sufficient funds to allow county elected officials to draw salaries at the rate specified in Sec. 15-43-4.6. As we view this problem, this is an area in which the board of county commissioners should be entitled to exercise its discretion. Subsection D, giving the Local Government Division the power to make corrections, revisions and amendments to proposed budgets, does not, in our judgment, give that Division a bludgeon to be held over the governing board of a local body to force them to exercise their discretion in accordance with the views of the officials in control of the Department of Finance and Administration. The amount of money deemed necessary to repair a court house should, in our judgment, be left to the exercise of sound discretion by the board of county commissioners. We do not feel that the Local Government Division, under sub-section D or any other section, can force the board of county commissioners to accept its estimate of what is necessary to repair the court house. It is, therefore, our opinion that a line item within a budget for repair of the court house is not such an expenditure as is necessary to meet the requirements of law within the meaning of subsection D, Sec. 11-2-57, insofar as fixing the amount necessary is concerned. It is further our opinion that the Local Government Division cannot arbitrarily force the board of county commissioners to establish a line item in a budget at a sum which, in the judgment of the board of county commissioners, is excessive to meet the needs of that item. As a consequence thereto, it is our opinion that the Local Government Division does not have the power to order suspension of all disbursements by a county merely because the county has not provided a sum of money for a line item which the Local Government Division feels is necessary. We cannot attribute to the legislature any such intention by the enactment of Sec. 11-2-57. To do so would be to attribute to the legislature the intention of effectively taking from the board of county commissioners of every county the right and power to exercise its discretion and judgment as to the expenditure of funds for the operation of the affairs of the county.

As regards your second question, it is our opinion that the Local Government Division may suspend a public hearing on a proposed budget at any time for good cause. We do not feel suspension of a public hearing over the question above discussed is suspension for good cause since, in our judgment, such action is by its nature arbitrary and outside the scope of the power and duties of the Local Government Division.

Your third question is based on the premise that there are sufficient funds to meet the expenditures for salaries proposed in the budget, so long as the board of county commissioners is allowed to exercise its judgment as regards the amount necessary to meet the minimum expenses of county government. On that basis, we conclude that the Local Government Division acted without right in reclassifying the salaries of the Sandoval County elected officials from the third class rate to the fourth class rate. It might be well to point out, however, that where funds are not available for the payment of salaries, the Bateman Act requires that available funds be distributed pro rata to the elected county officials so long as they last. We do not feel, however, that the Local Government Division can use the guise of forcing a large line item figure in a budget to justify cutting of salaries.

As regards your fourth question, we find nothing in the statutes requiring the Local Government Division to hold a new budget hearing on the basis of the facts and interpretations discussed in this opinion. It seems clear, however, that the Local Government Division should correct the Sandoval County budget in conformance herewith. If they do not do so, we feel the board of county commissioners of Sandoval County has grounds to apply to a court of competent jurisdiction for the issuance of a writ of mandamus to compel it to do so.

I presume this fully answers your inquiries.