

Opinion No. 62-122

October 1, 1962

BY: OPINION OF EARL E. HARTLEY, Attorney General Oliver E Payne, Assistant Attorney General

TO: Mr. Dan Sosa, Jr., District Attorney, Third Judicial District, Dona Ana Count Court House, Las Cruces, New Mexico

QUESTION

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(1) May a hospital bond issue election be called where the hospital by-laws provide that only medical doctors may be staff members?

(2) Can a board of county commissioners by resolution, and without petition, call for a bond election within two years after the same proposition has been defeated in a special election if the resolution calls for the bond election to be held at a general election?

CONCLUSIONS

(1) Yes.

(2) Yes.

OPINION

ANALYSIS

Section 67-8-12, N.M.S.A., 1953 Compilation, as amended in 1955, grants to licensed osteopathic physicians and surgeons the same rights, privileges and obligations in the rendering of medical services as is granted to physicians and surgeons of other schools of practice.

However, the third paragraph of this Section contains the following provision:

"The rights, benefits and obligations conferred by this act upon licensed osteopathic physicians and surgeons shall not be construed as taking from the governing authorities of all state, county and municipal hospitals, or from any publicly supported hospital either in whole or in part the complete control and management of such hospitals with power to make rules and regulations for the operation of such hospitals. . ."

In the case of **Monroe v. Wall**, 66 N.M. 15, 340 P. 2d 1069 (1959) our Supreme Court was called upon to interpret and construe Section 67-8-12, supra. In so doing, the Court pointed out that the first two paragraphs of the Section "place osteopaths on equal footing with medical doctors, but that the third paragraph reserves to the governing boards of public hospitals full control over the making of regulations to determine who should be on the staff, irrespective of the so-called equal rights given to osteopaths."

After discussing similar acts in other states, as well as the court decisions construing them, our Court concluded that rules and regulations promulgated by a hospital governing board which deny membership on the medical staff to osteopaths are neither unreasonable nor arbitrary.

In view of this recent pronouncement by our highest judicial authority, we must conclude that a bond issue election can be called for a general county hospital where the hospital by-laws allow only medical doctors to be members of the staff.

As we understand it, your second question arises out of the following factual background. Less than two years preceding the general election to be held in November of this year, a special hospital bond issue election was held at which time the proposition was defeated. You now inquire whether the Board of County Commissioners can, by resolution and without petition, call for another election on the same proposition to be voted on at the same time the November general election is held.

The answer depends upon a proper interpretation of Section 15-49-7, N.M.S.A., 1953 Compilation (P.S.), which provides in pertinent part as follows:

"After the defeat of any proposition once voted for, a second special election upon any question or proposition under the provisions of this article shall not be held for a term of two years, unless a petition requesting another election, containing the names of qualified electors of said county equal to ten percent of the vote cast for governor in the last preceding election and otherwise conforming to the requirements of this section, shall be presented to the board of county commissioners; Provided, however, that in no event shall **more** than two elections upon any proposition or question under this article be held in any term of two years. **A bond election as above provided may also be called by the county commissioners, without any petition, after said commissioners have adopted a resolution calling such an election**, which resolution shall set forth the object of the election and the amount of bonds to be issued." (Emphasis added)

Even if a bond issue election is held at the same time as a general election, it is still a special election for purposes of that issue so that the provisions of Section 15-49-7, supra apply.

This section, as noted above, makes it rather difficult for the electorate to initiate two special elections on the same proposition within a two-year period. However, when the

legislature in 1959 (Laws 1959,, Ch. 234) granted to the County commissioners the right to call such elections without a petition from the voters, it did not limit this power to the first election in a two-year period. Had that been the Legislature's intention it could easily have so stated. Such being the case, we find no legal obstacle to the Board of County Commissioners calling the second election in the two-year period by resolution.