

Opinion No. 63-48

May 13, 1963

BY: OPINION of EARL E. HARTLEY, Attorney General

TO: Mr. H. F. Allred Superintendent Roswell Schools Roswell, New Mexico

QUESTION

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What is the statutory requirement necessary to be followed in respect to giving legal notice by publication prior to offering school bonds for sale, and is it necessary to advertise the proposed sale of such bonds in a New York newspaper?

CONCLUSION

See analysis.

OPINION

{*100} ANALYSIS

Section 73-8-35, N.M.S.A., 1953 Compilation, provides that if the Attorney General shall have certified his approval of the transcript of school bond proceedings submitted by the school district proposing to issue such school bonds, then upon the giving of such approval "the authority to issue bonds under such (school bond) election shall mature and not otherwise, unless and until the validity of the bond proceedings be established by prior court action."

Following the receipt of such certificate evidencing approval of the proceedings for the issuance of such bonds, the school district is authorized to initiate action for the sale of such school bonds in the amount specifically authorized by the certificate of approval.

In initiating such bond sale several different statutes allude to the type of legal publication necessary to give notice of the proposed sale of the school bonds. Section 73-8-20, N.M.S.A., 1953 Compilation, specifies that a school district proposing to sell bonds authorized by a school election shall give notice as follows:

"* * * The county treasurer shall offer such bonds for sale after publication of notice of the time and place of sale, in a newspaper of general circulation throughout the county in which issued, and also in one financial newspaper published in the city of New York, once each week for four consecutive weeks next prior to the date fixed for such sale. Such notice shall specify the amount, denomination, maturity and description of the bonds to be offered for sale, and the place, day, and hour at which

sealed bids therefor will be received and opened, and that only unconditioned bids will be considered, and that each bid must be accompanied by a certified check, drawn on a solvent bank or trust company, payable to the order of the county treasurer, for not less than five per centum of the amount of the bid, as a guaranty that the bonds will be taken by the bidder if his bid is accepted and the bidder does not take the bonds in accordance therewith. * * *" (Emphasis supplied).

The above section was enacted by the state legislature by Laws 1923, Chapter 148, Section 701, and has never been expressly, by direct reference, repealed. In 1929, the state legislature passed a later enactment, Laws 1929, Chapter {**101*} 201, Section 3 which also dealt with the legal requisites necessary to afford published notice of a proposed sale of school bonds. This section, compiled as Section 11-6-17, N.M.S.A., 1953 Compilation, sets out in part as follows:

"Sale of Bonds. -- Before any bonds issued by such municipal corporation shall be offered for sale, the corporate authorities issuing such bonds shall designate the maximum rate of interest said bonds shall bear, which shall be in excess of six per cent per annum. **All such bonds shall be sold at public sale and a notice calling for bids for the purchase of said bonds shall be published once a week for two consecutive weeks in a newspaper having local circulation.** Such notice shall specify a place and designate a day and hour subsequent to the date of publication thereof when sealed bids shall be received and publicly opened for the purchase of said bond; * * *" (Emphasis supplied)

The term "municipal corporation" utilized in the above quoted statute is defined in Section 11-6-20, N.M.S.A., 1953 Compilation, to include a school district. Section 11-6-20, supra, was discussed in the case of **McWhorter v. Board of Education** (1958) 63 N.M. 421, 320 P.2d 1025, and the Court there acknowledged that the section had application to school districts.

Section 11-6-17, supra, was enacted after Section 73-8-20, supra, and also was amended by the legislature in 1937. Laws 1929, Chapter 201, compiled in part as Section 11-6-15 et seq., also provided for the repeal of "all acts and parts of acts in conflict herewith."

Examination of these two statutes quoted above reflects that the two acts are conflicting insofar as they relate to requirements for legal publication. Section 73-8-20, supra, necessitates publication in a newspaper once a week for four consecutive weeks in the county where the bonds are to be issued and for the same period in a financial newspaper published in the City of New York. Section 11-6-17, supra, however, requires only that legal publication be made once a week for two consecutive weeks in a newspaper having local circulation.

Since the two statutes are conflicting, a determination must be made as to which of these two provisions is controlling. Section 73-15-5, N.M.S.A., 1953 Compilation, bears upon the problem but does not provide a solution to the question presented, since this

statute provides that "except as otherwise specifically provided herein, whenever publication or advertisement is required herein it shall be made by one insertion in English in a newspaper published in the county and having general circulation therein . . ."

It is generally recognized that where there are two acts upon the same subject, they must stand together if possible, and in case they are inconsistent the later act operates as a repeal only insofar as its provisions are repugnant to the earlier enactment. **Stokes v. New Mexico State Board of Education** (1951) 55 N.M. 213, 230 P.2d 243; **State v. Valdez** (1955) 59 N.M. 112, 279 P.2d 868; **Alvarez v. Board of Trustees of La Union Townsite** (1957) 62 N.M. 319, 309 P.2d 989.

The two statutes under consideration both pertain specifically to the procedure involved in giving notice of the proposed sale of school bonds and the content and type of legal publication required. We believe the problem presented herein to fall within the rule stated in **Stokes v. N.M. State Board of Education**, supra, where the Court {**102*} quoted with approval the case of **Ellis v. N.M. Construction Co.** (1921):

"* * * A statute is repealed by implication, though such repeal is not favored, where the legislative intent is manifest that the later statute should supersede the former, and such intent is manifest where the Legislature enacts a new and comprehensive body of law which is so inconsistent with and repugnant to the former law on the same subject as to be irreconcilable with it, and especially does this result where the latter act expressly notices the former in such a way as to indicate an intention to abrogate. * * *"

Therefore, after a careful study of the two conflicting statutes we are led to the conclusion that Section 73-8-20, supra, is superseded by Section 11-6-17, supra, insofar as the latter statute relates to the procedure and legal requirements for the giving of notice by publication in a legal newspaper of the proposed sale of such school bonds. And, since the provisions of Section 11-6-17 are controlling in regard to the requisites for legal publication, it is not necessary to give notice of the proposed sale of such school bonds in a New York newspaper as formerly required under Section 73-8-20, supra.

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