

Opinion No. 64-132

October 26, 1964

BY: OPINION OF EARL E. HARTLEY, Attorney General Frank Bachicha, Jr., Assistant Attorney General

TO: Honorable Patrick F. Hanagan, District Attorney, Fifth Judicial District, Roswell, New Mexico

QUESTION

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1. Is the word "electors", as it is used in Section 73-30-21 (C), N.M.S.A., 1953 Compilation, restricted to taxpaying electors or owners of property within the school district?
2. If the term "electors" above is not restricted to owners of property or taxpayers within the district, must the electors voting on the question of the tax levy live within the territorial boundaries of the school district or districts involved?

CONCLUSIONS

1. No.
2. Yes.

OPINION

ANALYSIS

The law with respect to branch community colleges in New Mexico was first enacted by Chapter 143, Laws of 1957. Certain amendments were effected and new sections added by the Laws of 1963, Chapter 162. At present, the provisions pertinent to our inquiry herein are as follows:

"73-30-21. Tax levies authorized. -- A. The board may levy and collect a tax annually against the property in the school district or districts comprising the branch community college district. . . ."

. . . .

C. In the event the amount necessary to be raised for such purposes exceeds in any year the constitutional limit of twenty (20) mills for all other purposes in the district or districts, **the question of levying additional taxes**, over and above the limitation for

the support of the branch community college **shall be submitted to the electors and voted upon as a separate question at the next subsequent general election.** The election upon the question shall be called, handled, conducted and canvassed in substantially the same manner as is provided by law.

"73-30-22. Election on special levy. -- If the electors vote in favor of the special levy, it shall become effective in the following taxable year and each year thereafter unless the branch community college district is dissolved."

In order to find that only those electors who are property taxpayers within the school district comprising the branch community college district are authorized to vote on the question relating to the tax levy, we would be required to add such a qualification to the express words of the above Section 73-30-21 (C). It is our opinion that we are not permitted to do this consistent with certain recognized rules of statutory construction. In **Montoya v. McManus**, 68 N.M. 381, 362 P. 2d 771, it was said:

"Words will not be added to a statute except when necessary to make the statute conform to the obvious intent of the legislature, or to prevent the statute from being absurd." (Citing **Moruzzi v. Federal Life & Casualty Co.**, 42 N.M. 35, 75 P. 2d 320.)

We cannot say reasonably in this instance that the Legislature obviously intended to place a taxpaying qualification upon the electors referred to in the Act providing for the establishment of branch community colleges; nor can we say that without such construction the statute would be rendered absurd. On the contrary the statute can be given a reasonable application without such qualification.

In Article IX, Section 11 of the New Mexico Constitution, entitled "School district indebtedness -- Restrictions" it is provided in effect that in order to create a debt the question must be submitted to "a vote of such qualified electors of the district as are owners of real estate within such district."

In Article IX, Section 12, New Mexico Constitution, relating to "Municipal indebtedness -- Restrictions" it is stated:

". . . No such debt shall be created unless the question of incurring the same shall . . . have been submitted to a vote of such qualified electors thereof as have paid a property tax therein during the preceding year. . . ."

The same restriction and qualification of electors appears in Article IX, Section 10, New Mexico Constitution, relating to "County indebtedness -- Restrictions."

And further, the Junior College Act, cited as Sections 73-33-1 through 73-33-19, N.M.S.A., 1953 Compilation (P.S.), contains a reference in various provisions to "qualified voters of each school district who shall have paid a property tax therein during the preceding year." This Act was enacted by Laws 1963, Chapter 17, prior to the 1963

amendments to the Act with which we are here concerned, i.e., that providing for branch community colleges.

The foregoing facts bring into play another well recognized rule of statutory construction used in determining legislative intent. This rule was applied in **State ex rel. Maryland Casualty Co. vs. State Highway Commission**, 38 N.M. 482, 35 P. 2d 308, and is to the effect that in interpreting a statute, the court must presume that the legislature was informed as to existing law.

In this instance, too, we must presume that the legislature was cognizant of the qualification to which we have made reference above, and that they chose to ignore it in the case of elections for tax levies for financing branch community colleges. We are thus permitted to conclude that any intent by the legislature to place either a taxpaying or real estate ownership qualification upon the electors mentioned in Section 73-30-21(C), supra, would most certainly have been expressed.

Your second question is easily answered. We are concerned here with one taxing district, e.g., the school district or districts which comprise the branch community college.

Note that the election on the question of the tax levy is permitted by Section 73-30-21 (C), supra, only if "the amount necessary to be raised . . . exceeds in any year the constitutional limit of twenty (20) mills. . ." This limitation refers to that found in Article VIII, Section 2, New Mexico Constitution, which authorizes, pursuant to legislative act, taxation over and above the limitation when "approved by at least a majority **of the electors of the taxing district voting on such proposition.**" (Emphasis supplied).

Once approved, the tax is to be levied and collected annually " **against the property in the school district or districts** comprising the branch community college." (Emphasis supplied.)

It appears, too, that the principal beneficiaries of the establishment of such branch community colleges would be the residents of that district.

The above considerations lead us to the conclusion that those entitled to vote upon the question of the tax levy, for the support of the branch community college, are those, otherwise qualified to vote, who reside within the taxing district, without regard to any taxpaying or real estate ownership qualification.