

Opinion No. 65-17

February 2, 1965

BY: OPINION OF BOSTON E. WITT, Attorney General Joel M. Carson, Assistant Attorney General

TO: Inez B. Gill, Legislative Fiscal Analyst, State Capitol Building, Santa Fe, New Mexico

QUESTION

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Is it illegal for the taxing authorities for various school districts in New Mexico to cause taxes to be levied on property within such school districts and then budget them and allocate a portion of the proceeds of such taxes to municipalities located in such school districts for the use of such municipalities?

CONCLUSIONS

See analysis.

OPINION

{*29} ANALYSIS

For a number of years some school districts within this state have levied a 4 1/2 mill direct charge levy upon all property located within the school districts including that located in municipal corporations. The municipalities have made no such levy. The school districts have levied the tax and have paid the municipalities approximately {*30} the same amount which would have been raised by them if the municipality had a 2 1/4 mill levy. Opinion No. 6265 held such a procedure proper. We see no reason to overturn that decision.

New Mexico Constitutional Article VIII Section 2 permits a levy of not exceeding 4 mills for state purposes other than institutional requirements and maximum levy of 10 mills for all state purposes. A levy for state levy is limited to 5 1/2 mills leaving 4 1/2 mills to be levied by the school district and municipality. The finance department regulates the levy made by the county commissioners in order to insure compliance with necessary budgetary requirements. See N.M.S.A. 72-4-4, 72-4-11.

In Opinion No. 6265 we held that the State Tax Commission had the power to determine the distribution of the above mentioned 4 1/2 mill levy. While the function of making the determination as to the distribution of the levy has been transferred from the State Tax Commission to the Department of Finance and Administration nothing has

transpired which would take from the Department of Finance and Administration the power formerly held by the State Tax Commission. Therefore the power to make the determination as to the distribution of the levy still remains intact.

A second question must then be answered. If the school district can authorize the 4 1/2 mill levy mentioned above with the approval of the Board of Finance, does the district have the power to distribute a portion of the proceeds of the levy to the municipality? Relying on the authority of the now repealed N.M.S.A., 73-7-6 we said that the school district had the authority to make distribution of the funds acquired by reason of the levy and that a portion of this distribution could be given to the municipality. The school budgets are now required to be submitted in a different form than that required by N.M.S.A., 72-7-1 through 73-7-16. The form to be followed is set forth in N.M.S.A., 73-7-84 (P.S.). The same material required by N.M.S.A., 73-7-6 is still required to be submitted. We are still of the opinion that the school district may distribute a portion of the money which it receives pursuant to the levy authorized by N.M.S.A., 73-7-85 to the municipal schools.

We ask you to note, however, that Opinion No. 6265 cautioned that there were hazards in making such a distribution of the money. The legislation which has passed since the writing of that opinion has not decreased these hazards.