

Opinion No. 65-192

October 7, 1965

BY: OPINION OF BOSTON E. WITT, Attorney General Oliver E. Payne, Deputy Attorney General

TO: Mr. Willard W. Moon, Superintendent, Melrose Public Schools, Melrose, New Mexico

QUESTION

QUESTION

What is the correct method of crediting the general county school tax levy of that part of a school district which lies outside the county where said school district is headquartered?

CONCLUSION

See analysis.

OPINION

{*312} ANALYSIS

The most recent statute on this question is Section 73-7-85, N.M.S.A., 1953 Compilation (P.S.):

"COUNTY SCHOOL LEVIES -- DISTRIBUTION. -- The board of county commissioners shall annually levy for school purposes at the time of making other county levies, a general county school tax, not in excess of 10 mills, at the rate certified by the public school finance division, and a special district tax, not in excess of five mills, to meet district requirements exclusive of interest and sinking requirements. The general county school tax shall be in addition to and exclusive of the one-half mill county-wide tax levied by section 34 of the Public School Finance Act. The proceeds of the county general school tax shall be distributed to the credit of the districts in the county according to the proportion the {*313} weighted membership of each district bears to the weighted membership of the entire county. The proceeds of the district levy shall be placed to the credit of the district on which the levy was made. **If a district lies in two or more counties, then the proceeds of the general county school tax levy attributable to the area of the district lying outside the county in which the district is headquartered. The county treasurer who receives the transferred money shall distribute it at the same time the proceeds of the general county school tax levy within his county.**" (Emphasis supplied.)

Prior to the enactment of §§ 73-7-85, supra, in 1962, the only statute dealing with transfer of funds in these matters was § 73-20-5, N.M.S.A., 1953 Compilation:

"CONSOLIDATION OF SCHOOLS IN DIFFERENT COUNTIES -- GOVERNMENT -- TRANSFER OF FUNDS. -- Consolidations of rural school districts made in two or more counties may be effected in the same manner and subject to the same restrictions as provided in the last three preceding sections and the county boards of education of the territory or districts affected shall jointly act in the proceedings to consolidate. The county which had the largest average daily attendance within the territory consolidated shall govern said consolidated districts as though it were wholly within its own territory, except as to the making of tax levies. **Funds of the fractional part of the consolidated district in the servient county shall be transferred from time to time to the county treasurer of the dominant county and credited to the consolidated district.**" (Emphasis supplied.)

Since the result of the application of these two statutes is different, only one may control. Repeals by implication are not favored. **Alvarez v. Board of Trustees of La Union Townsite**, 62 N.M. 319, 309 P. 2d 989. However, where there is "such a positive repugnancy between the provisions of the old and the new statutes that they cannot be reconciled and made to stand together" the earlier statute will fall. **Alvarez v. Board of Trustees of Union Townsite**, supra.

In this case the underlined portion of each statute is repugnant to and irreconcilable with the other. Therefore, the later statute, 73-7-85, supra, prevails. However, only that part of 73-20-5, supra, which actually is irreconcilable with 73-7-85, supra, no longer controls. **Alvarez v. Board of Trustees of La Union Townsite**, supra.