

## Opinion No. 65-67

April 23, 1965

**BY:** OPINION OF BOSTON E. WITT, Attorney General Wayne C. Wolf, Assistant Attorney General

**TO:** Alberta Miller, Secretary of State, State Capitol, Santa Fe, New Mexico

### QUESTION

#### QUESTIONS

1. What are the statutory re-requirements for a referendum petition relating to Chapter 234, Laws 1965, with respect to the wording of the referendum and percentage of signatures required for the referendum petition?

#### CONCLUSION

Chapter 234, Laws 1965, is not subject to referendum.

### OPINION

#### {\*114} ANALYSIS

Before considering the question you have posed, we are compelled to determine whether Chapter 234, Laws 1965, is subject to a referendum. If it is not, the answer to your question becomes {\*115} unnecessary. The authority for a referendum is found in Article IV, Section 1, Constitution of New Mexico. The pertinent portions of that section in the 1953 Compilation read:

"The people reserve the power to disapprove, suspend and annul any law enacted by the legislature, except general appropriation laws; laws of the public peace, health or providing for the preservation of the public peace, health or safety; \* \* \* and local or special laws."

Other portions of this section, not applicable to your question, limit the power of referendum to laws enacted at the last preceding session of the legislature.

The issue presented, therefore, is whether Chapter 234, Laws 1965, is a measure providing for the preservation of the public peace, health or safety. It need only reasonably provide for one of those three subjects to be exempt from referendum. **State v. Cleveland**, 47 N.M. 230, 141 P.2d 192. It does not have to be necessary for the preservation of one of the subjects but only reasonably to provide for that subject. **State v. Cleveland**, supra. A legislative declaration that a law does provide for one of the listed subjects is entitled to great respect, but it is not necessarily binding on the courts.

**State v. Cleveland**, supra. By the same token, however, it is not necessary that the law expressly declare the relation if the law is by its terms reasonably calculated to provide for one of those subjects. See **Otto v. Buck**, 61 N.M. 123, 295 P.2d 1028, which held that Chapter 37, Laws 1955 was not subject to referendum and that law had no express declaration that it provided for the public peace, health or safety.

Chapter 234, Laws 1965, which is the subject of your present inquiry, does not expressly declare that it provides for the public peace, health or safety. This law, however, by its terms, establishes an indigent hospital claims board in each county. The law provides for the payment for hospital care for those persons unable to pay for the cost of hospital care administered. The declared purpose of the law is to provide a means whereby each county can discharge its responsibility to indigents through a system of financial reimbursement to hospitals for actual costs incurred in the treatment of indigent residents of the county.

We express no opinion of whether this law is necessary to provide for the public health, but we have no doubt that it does provide for the public health. It is certainly as strong a provision in this respect as was Chapter 95, Laws 1943, which imposed a tax on cigars and cigarettes and allocated the proceeds for old age assistance. That law was held exempt from referendum in the case of **State v. Cleveland**, supra, on the reasoning that the assistance provided was a protection from cold and hunger as well as a provider of food, clothing and shelter, all of which are essential to health.

The law now being considered provides hospital care in that it encourages the treatment of indigents in the county. We can only conclude that it reasonably provides for the public health and is, therefore, exempt from referendum.