

Opinion No. 65-72

April 29, 1965

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

TO: Mr. Luis L. Fernandez, Local Government Division, Department of Finance and Administration, Santa Fe, New Mexico

QUESTION

AND TO ALL COUNTY COMMISSIONERS

QUESTION

How and when is the election provided for in the Indigent Hospital Claims Act (Laws 1965, Chapter 234) to be held?

CONCLUSION

See analysis.

OPINION

{*122} ANALYSIS

The 1965 Indigent Hospital Claims Act recognizes that the individual counties of the state are the responsible agencies for the hospital care of indigent persons domiciled in the county. The purpose of the Act as stated by the legislature is "to provide a means whereby each county can discharge this responsibility through a system of financial reimbursement to hospitals for actual costs incurred as the result of the care and treatment of the indigent person in the hospitals of this state."

The Act, which has an effective date of July 1, 1965, provides that there is created within each county a "county indigent hospital claims board" whose members shall be the members of the board of county commissioners of that county. This board, which is to administer the Indigent Hospital Claims Act, is charged with the duty of preparing a budget setting forth the amount needed to defray claims and administrative costs under the Act. For the first year of operation the board is to estimate the amount necessary. This amount is to be certified to the board of county commissioners. Upon such certification the board of county commissioners is to impose a levy against the taxable value of the property in the county sufficient to raise the amount certified.

If the levy, when added to all other levies authorized by law, exceeds the constitutional limitation of twenty mills, then the question of imposing an indigent hospital levy in excess of the constitutional limitation is to be voted on by the electorate.

The Act provides that the election on the issue may be voted upon at the next general election or at any special election. Since the next general election does not take place until 1966, and since the necessary funds for a special election are not available in every county, the issue should be voted upon at the date set for the election on the recently proposed constitutional amendments (September 28, 1965). This date will not conflict with Section 72-4-4, N.M.S.A., 1953 Compilation which provides as follows:

"72-4-4. County commissioners to make levies and certify same to assessor. -- It shall be the duty of the board of county commissioners of each county in the state, at a meeting held on the first Monday of September of each and every year, to make and order all levies of necessary taxes for the fiscal year as provided by law, which order shall be entered of record in their proceedings and endorsed upon the assessment roll under the seal of said board and the hand of the clerk thereof, and certified to the county assessor. Such levies shall conform to and be within the budgets {**123*} or estimates for such year, as approved by the state department of finance and administration and the divisions thereof, and shall be within the limitations as to purposes and maximum rates of levy as provided by law, and shall not be altered, changed or modified after the first Monday of September, **except in the correction of errors or invalid rates** and then only by order of the state department of finance and administration." (Emphasis added).

If the vote should turn out to be unfavorable on the indigent hospital claims levy, then the total levy can be reduced by the amount budgeted for indigent hospital claims based on the authority of the underscored language.

Not less than thirty days nor more than fifty days prior to the election the board of county commissioners is to determine whether the hospital levy, when added to all other authorized levies, will exceed the twenty mill limitation. If so, it is to make a finding that an election is necessary and shall order such election. The order is to be made a part of the official minutes of the board and a copy must be published in a newspaper of general circulation in the county at least fifteen days prior to the election, and an affidavit of such publication shall be obtained.

At least five days prior to the date of the election the board of county commissioners shall publish a notice of election in the form prescribed in the Act in a newspaper of general circulation in the county. The board must also post a notice of the election in five conspicuous places in the county.

Since the Act provides that the ballot on this particular issue is to be special and separate, the board of county commissioners in conjunction with the county clerk must see that sufficient paper ballots are printed containing the language set forth in the Act.

If the electors vote in favor of an indigent hospital levy, the levy is to become effective in the same manner prescribed by law for all levies upon property in that county.