

## **Opinion No. 66-05**

January 12, 1966

**BY:** OPINION OF BOSTON E. WITT, Attorney General Myles E. Flint, Assistant Attorney General

**TO:** Harry A. Wugalter, Chief, Public School Finance Division, P. O. Box 668, Santa Fe, New Mexico

### **QUESTION**

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1. Can the special budget hearing be held at a location other than within the city or county where the school district proposing to alter or amend its budget is located?
2. Must the publication designate the place of the hearing?
3. Must this be a public hearing?
4. Must one or both of the Budget Commissioners be in attendance?

#### **CONCLUSIONS**

1. Yes.
2. Yes.
3. Yes.
4. No.

### **OPINION**

#### **{\*6} ANALYSIS**

Section 73-3-9, N.M.S.A., 1953 Compilation (P.S.) provides in part:

"The director of the department of finance and administration, after notice and hearing, may authorize an increase in a school budget, after final approval, in amounts of more than five hundred dollars (\$ 500).

The notice of the hearing shall designate the school unit which proposes to alter or amend its budget together with the time and date of hearing. The notice of hearing shall be published for at least once each week for two (2) consecutive weeks in a newspaper

of general circulation in the county in which the school unit is located; the last publication of the notice shall be at least three (3) days prior to the date set for hearing."

The first question raised is whether a hearing conducted pursuant to this section may be conducted outside the county and school district involved. It is our opinion that this may be done. Neither the statute set out above nor the statute discussing hearings on regular budget matters specifies the location or place of hearing. We, therefore, conclude that such matters could be held, for example, in Santa Fe.

It may be that because matters of great local interest and consequence are involved the Director may desire to hold such hearings in the locale which is concerned with the involved increase. This is, however, a matter in the discretion of the Director.

In answer to your second question, it is our opinion that notice given by publication should designate the place of hearing. Without such information, the notice would not adequately advise interested persons of facts necessary for them to enter an appearance and participate in the hearing.

It is also our opinion that hearings to be held pursuant to Section 73-3-9, supra, must be public hearings. This is a basic necessity in keeping with the view that public business should be conducted on a public basis.

Budget Commissioners are called for under Section 73-7-78, N.M.S.A., 1953 Compilation (P.S.) which provides:

"SCHOOL BUDGET COMMISSIONERS -- APPOINTMENT -- SCHOOL EMPLOYEES EXCLUDED FROM SERVING -- COMPENSATION. -- On or before the first day of April in each odd-numbered year each board of county commissioners shall appoint one resident taxpayer of said County from each of the two dominant political parties, who shall serve as school budget commissioners, and, who, with the chief of public school finance division of the department of finance and administration, shall prior to June 20 of each year, fix {\*7} the budget allowances for all public elementary and high schools in the county. No person employed by any school within the county in any capacity shall be appointed by the county commissioners as a school budget commissioner. The said commissioners shall each receive as compensation the sum of ten dollars (\$ 10.00) per day for actual attendance upon budget hearings, and traveling expenses to and from the county seat at the rate of ten cents (\$ .10) per mile for each mile actually traveled."

Under this section, the budget commissioner and the Chief of Public School Finance Division of the Department of Finance and Administration are to establish the annual budgets of the schools within the county prior to June 20 of each year. No reference is made in this section to revising of budgets. It would appear that they are given this one task.

Section 73-3-9, supra, grants all powers with regard to increases in a budget to the Director of the Department of Finance and Administration. That person has an exclusive

grant of power to control school budget increases after budgets are finally approved. If the increase is less than \$ 500.00, he may act without notice and hearing. If the increase is more than \$ 500.00, he is permitted to grant or deny the increase only after the issuance of notice and a hearing has been held. On the basis of these statutes it is our opinion that the Director may conduct hearings alone and that the attendance of Budget Commissioners is not required.