

Opinion No. 65-99

June 17, 1965

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

TO: Clay Buchanan, Director, New Mexico Legislative Council, State Capitol, Santa Fe, New Mexico

QUESTION

FACTS

Prior to the recent enactment of the Indigent Hospital Claims Act, Laws, 1965, Chapter 234, all counties were authorized, under certain conditions, to levy a tax to pay the cost of operating and maintaining county hospitals. If the levy was to exceed the twenty-mill maximum, the issue had to be submitted to the voters. If the levy was voted upon favorably, it was to be made for the ensuing fiscal year and future years. However, the question of continuing the levy had to be submitted to the voters every four years. The authorization for such levies was repealed as to all except Class A counties by the Indigent Hospital Claims Act.

QUESTION

If a county had held an election on the levy prior to the effective date of the Indigent Hospital Claims Act and the tax had been levied for a part of the four-year period, can the county continue to levy the tax for the balance of the four-year period?

CONCLUSION

No.

OPINION

{*169} ANALYSIS

Section 15-48-12, N.M.S.A., 1953 Compilation (P.S.) provides that "The boards of county commissioners in counties in which are located or are under construction county hospitals or in counties having no county hospital but wherein a municipally-owned hospital is serving in lieu of a county hospital are hereby authorized to levy and collect annual assessments against the property in such county to pay the cost of operating and maintaining such hospitals . . ." In all except Class A counties the levy was not to exceed three-fourths of one mill on each {*170} dollar of assessed value of property subject to taxation.

Section 15-48-13, N.M.S.A., 1953 Compilation (P.S.) provides that if the amount necessary to be raised by taxation for such purposes is to exceed the twenty-mill limitation, the issue must be submitted to the voters. This section further provides that:

"In the event the levy is voted upon favorably by the electors of the county, the levy shall become effective and be made for the ensuing fiscal year and future years, provided that the question of continuing the levy is submitted to the electors at a general election each four years thereafter."

This hospital levy authorization as to all except Class A counties was repealed by the Indigent Hospital Claims Act, Laws 1965, Chapter 234. The repealer is effective on 12:01 A.M., June 18, 1965. Your question is whether the levy can be continued for the balance of the four-year period when an election was held and the issue was voted upon favorably prior to the effective date of the Indigent Hospital Claims Act. Our conclusion is in the negative.

Section 72-4-4, N.M.S.A., 1953 Compilation, one of the statutes relating to the levy of taxes, provides as follows:

"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 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 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).

Since the ordering of levies is done annually for the fiscal year, **as provided by law**, the authorization for such a levy will no longer exist after June 18, 1965. With this particular levy no longer provided by law, a levy previously voted upon favorably cannot be made for the additional years of the four-year period.