Opinion No. 66-04

January 11, 1966

BY: OPINION OF BOSTON E. WITT, Attorney General James V. Noble, Assistant Attorney General

TO: Mr. Gordon L. Gay, Assistant District Attorney, Fifth Judicial District, County Court House, Roswell, New Mexico

QUESTION

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Can a levy for county hospital operation and maintenance which has been approved by a vote of the residents be revived by reenacting repealed enabling legislation?

CONCLUSION

Yes, but see Analysis.

OPINION

*{*4}* ANALYSIS

Laws of 1949, Chapter 95, as amended (Sec. 15-48-1, N.M.S.A., 1953 Compilation, as amended) provided the authority for a county to construct, purchase, own, maintain and operate a hospital. A tax levy for such purposes was authorized. However, if it became necessary to exceed the twenty (20) mill constitutional limitation on indebtedness in order to carry out the provisions of the Act an additional levy of three-fourths (3/4) of one (1) mill could be authorized by a vote of the electors of the county. Such levy once voted was imposed upon all taxable property in the county and was collected annually. The authorization remained effective for a period of four years but had to be renewed at a general election each 4 years thereafter.

Certain counties have taken advantage of the provisions of this Act and were or are maintaining and operating county hospitals with the 3/4 mill levy authorized by the above enabling legislation and by a vote of the electors. **The four year period of authorization for the levy by the electors of the county has not expired.** However, the provisions of the Act were amended in 1965 so as to delete the authorization for the imposition of the levy as to all counties except Class "A" counties, with which we are not here concerned. There is thus, at this moment, no existing legislative authority for the imposition of the levy of the 3/4 mill previously authorized.

The amendment came about as a part of the Indigent Hospital Claims Act. (Laws of 1965, Chapter 234, compiled as Section 13-2-13, N.M.S.A., 1953 Compilation (P.S.).

This 1965 Act provided, among other things, for a vote in order to levy a tax over the 20 mill limitation. There was no ceiling as to the amount of such levy. The problem then arises where a county has voted the 3/4 mill *{*5}* levy under the earlier act, but has failed to vote a levy under the 1965 Act. The enabling legislation for the continued levy having been destroyed by the 1965 Amendment. There presently exists no authority to continue the levy. Opinions of the Attorney General 1965-66, Opinion No. 65-99, dated June 17, 1965. Under such facts the counties in question have insufficient funds to maintain and operate their county hospitals since neither levy is now being collected. (Opinions of the Attorney General 1965-66 as yet unpublished.)

The question presented concerns itself with whether the legislature may, by appropriate legislation, reenact the authority for the imposition of the 3/4 mill levy in such a way as to revive the previous authorization of the electors for its imposition.

In considering the problems it is noted that the amendments do not purport to affect the validity of the authorizing elections. They merely remove the procedural method of making the previously authorized levy. In other words the levy was validly authorized under then existing legislation, but the legislature, by reason of the Amendments, has removed any method of placing the levy on the taxable property and of collecting such levy. Opinion No. 65-99, supra, is to the same effect.

Where no express legislative enactment exists the common law is the Law of New Mexico. **Beals v. Ares,** 25 N.M. 459. At common law when a statute which repealed a former law is itself repealed, the former law is revived and again is in effect. **Gallegos v. A.T.S.F. Ry. Co.,** 28 N.M. 472. In addition to this common law rule, Article IV, Section 1 of the New Mexico Constitution contains language concerning the effect of an annulment of a law by referendum. In substance this provision says that the effect of such is the same **as though it had been repealed by the legislature and such repeal shall revive any law repealed by the act so annulled.**

In addition to this language indicating that there is no bar to reviving a former law, Section 1-2-3, N.M.S.A., 1953 Compilation provides as follows:

"Whenever an act is repealed, which repealed a former act, such former act shall not thereby be revived **unless it shall be expressly provided.** (Emphasis added.)

There are three methods by which, under our Law, a former law can be revived after being, as here, repealed. The first is the common law where the repealing statute is repealed prior to the enactment of Section 1-2-3, supra, (1912) **Gallegos v. A.T.S.F. Ry. Co., supra.** The second is by the annulment of a repealing statute under the provisions of the Constitution. The third is by repealing the repealing act, and specifically providing for revival of the repealed legislation. We are here faced with the third situation.

Since the authorization of the electors to make the levy has not been destroyed and since the amendment repealed, insofar as here pertinent, only the abilities of the taxing

officials to cause the levy to be placed on the rolls, proper reviving legislation can be enacted. Such would have the effect of reviving the former law authorizing the proper officials to place the levy on the tax rolls and to collect it.

It is noted that the legislation necessary to accomplish this purpose must be carefully drawn in order to do so. It is further noted that the authorization of the electors for such a levy, will expire of its own limitations at the general election four years after the first authorization unless renewed by a vote of such general elections.