

## Opinion No. 67-111

October 4, 1967

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

**TO:** Mr. Dale E. Traylor, Dean Eastern New Mexico University Roswell Campus  
Roswell, New Mexico

### QUESTION

#### FACTS

In 1964 the voters of Roswell School District No. 1 voted a tax levy to support the Roswell Community College. The wording of the proposition on which the people voted was as follows:

"Shall the Board of Education of Roswell Municipal School District Number One levy upon the property within the said school district a tax for the support of the Roswell Community College, a Branch of Eastern New Mexico University, for the year of 1965-1966 and succeeding years, said levy to be in an amount of not more than \$ 100.00 per average full-time student equivalent in the enrollment of the preceding fiscal year as certified to the Chaves County Commissioners and the Chaves County Tax Assessor by the Board of Education of the Roswell Municipal School District Number One?"

The location of the Community College has now been moved to the site of the former Walker Air Force Base. The Roswell City Council is in the process of annexing the Walker site into the city limits. This will place the college within the Roswell city limits, but not within Roswell School District No. 1.

#### QUESTIONS

1. Does the change in scope of the college operation from academic to vocational and academic necessitate a revote on the tax levy in Roswell School District No. 1?
2. Since the move to the site of the former Walker Air Force Base places the college outside the geographical boundaries of Roswell School District No. 1, can the college continue to receive support from Roswell School District No. 1?
3. In the event that it is decided by the proper authorities to enlarge the community college district to include the Chaves County School District, and possibly others, is it necessary to revote the tax levy in Roswell School District No. 1?

#### CONCLUSIONS

1. Only if tax levy monies are to be used to finance the vocational program.

2. No.

3. Yes.

## OPINION

### {\*161} ANALYSIS

The 1964 election on the issue of a tax levy in Roswell School District No. 1 for the establishment of a community college was based on Section 73-30-17, N.M.S.A., 1953 Compilation. This section defines educational level as covering the thirteenth and fourteenth years of education.

{\*162} In 1967, Section 73-30-17, supra, was amended to provide that the program includes the first two years of college education and may include organized vocational and technical curricula of not more than two years' duration. Further, Section 73-30-30, also enacted in 1967, provided a \$ 390,000 appropriation to Eastern New Mexico University for use by the branch community college at Walker Air Force Base in connection with its academic, vocational and technical instructional program.

Your first question is whether a new vote of approval is necessary if the community college offers vocational courses as well as purely academic courses. A new vote is necessary prior to any tax levy monies being used for the vocational and technical program. The original vote only approved a program of study normally offered in the thirteenth and fourteenth years of education -- in other words an academic program. A new vote pursuant to Section 73-30-21, N.M.S.A., 1953 Compilation (P.S.) is necessary if some students are going to enroll **solely or primarily** for vocational or technical courses and be counted as fulltime equivalent students. However, the appropriation made in Chapter 66, Laws 1967, can be used to finance the vocational and technical program as well as the academic program.

Tax levy support money can only be used to support a facility physically located within the school district wherein the voters approved the levy. See **Raynolds v. Swope**, 28 N.M. 141.

In your third question you ask whether an enlargement of the community college district to include the Chaves County School District, and possibly others, would necessitate a revote of the levy in Roswell School District No. 1. In this connection we would say this -  
- If the levy will result in exceeding the 20-mill limit, it has to be voted on by the electorate in the entire district. The levy cannot be imposed, for example, in the Chaves County School District unless the electorate therein votes favorably on the levy. When the district is enlarged to encompass more than one school district, a new election must be held in the **entire** area to be included in the new district -- this, if for no other reason, the make-up of the governing board will be changed. If a majority vote is obtained, the branch community college may expend the tax levy monies in connection with its entire academic, vocational and technical program. You might also wish to consider using the

authority contained in Chapter 177, Laws 1967, to create an area school vocational district.

By: Oliver E. Payne

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