

Opinion No. 67-138

November 17, 1967

BY: OPINION OF BOSTON E. WITT, Attorney General

TO: J. W. McCormack Superintendent Farmington Municipal Schools P.O. Box 660
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QUESTION

FACTS

On March 21, 1967, a Farmington school district election resulted in the rejection of a proposed school bond issue. At the time of the rejection of the proposed school bond issue Section 73-8-21, N.M.S.A., 1953 Compilation was in effect. This section provided, in pertinent part, as follows:

Two (2) separate questions may be submitted in the petition for election and in the election, in which case the vote thereon shall be separately counted, canvassed and certified, but in the event any question so submitted is defeated no further election shall be held on the same question for a period of two (2) calendar years from the date of the election.

The 1967 Legislature repealed substantially all of the New Mexico statutes relating to public schools, including Section 73-8-21. The 1967 Legislature thereafter enacted the New Mexico Public School Code which is compiled as Chapter 73, Art. 1-20, N.M.S.A., 1953 Compilation. Section 77-15-8, supra, a provision of the New Mexico Public School Code, provides as follows:

77-15-8. Restriction on bond elections. -- In the event a majority of those persons voting on a question submitted to the voters in a bond election vote against creating a debt by issuing general obligation bonds, no bond election shall be held on the same question for a period of two years from the date of the bond election, except upon the presentation of a petition pursuant to section 77-15-2, New Mexico Statutes Annotated, 1953 Compilation and after the expiration of at least six months from the date of the previous bond election on the question. If a majority of those persons voting on a question submitted to the voters in a bond election for a second time within two years vote against creating a debt by issuing general obligation bonds, no bond election shall then be held on the same question for a period of two years from the date of first bond election on the question.

QUESTION

Since the new code did not become effective until July 1, 1967, must the local board, upon meeting requirements, wait six months from July 1, 1967, or only six months from

March 21, 1967, before submitting the rejected school bond issue to the voters for the second time?

CONCLUSION

July 1, 1967.

OPINION

{*222} ANALYSIS

As a matter of general statutory interpretation, statutes, except those of a remedial nature only, are prospective in effect unless there is a clear legislative intent to make the statute retroactive. **Gallegos v. A.T. &S.F. Ry. Co.**, 28 N.M. 472, 214 P. 579; **Wilson v. New Mexico Lumber & Timber Co.**, 42 N.M. 438, 81 P.2d 61; **Board of Education of City o Las Vegas v. Boarman**, 52 N.M. 382, 199 P.2d 998; **Bradbury & Stamm Const. Co., v. Bureau of Revenue**, 70 N.M. 226, 372 P.2d 808; **Clark v. Ruidoso-Hondo Valley Hospital**, 72 N.M. 9, 380 P.2d 168.

This rule is also applicable to enactment of codes or other unified groups of laws. Thus, it has been held that when the old law is incorporated without change in an official code it continues in effect from the time of enactment. **Merlo v. Johnson City & Big Muddy Coal & Mining Co.**, 258 Ill. 328, 101 N.E. 525. However, where the law is altered by the code it operates prospectively unless there is shown legislative intent to have it applied retroactively. **In re Whiting's Estate**, 110 Cal. App. 339, 294 P. 502; **People v. {*223} Cohen**, 245 N.Y. 419, 157 N.E. 515.

In applying these principles to the problem at hand we note that the Public School Code of 1967 has specifically revoked Section 73-8-21. Then, the Public School Code provides for a somewhat different method of determining how much time shall pass between an unsuccessful bond election and a new election. Finally, we note that none of the provisions of the Public School Code's savings clauses would operate to give Section 73-15-8 retrospective effect, Laws 1967, Ch. 16, Section 294 and 295. These sections provide as follows:

Section 294. TEMPORARY SAVING CLAUSE. --

A. The Public School Code shall not in any manner affect the rights, liability or right of action for or against a school district in any action commenced before the effective date of the Public School Code.

B. The adoption of the Public School Code shall not be construed to repeal or in any way affect or modify:

(1) any substantive or fixed right;

(2) any law authorizing the issuance of any outstanding bonds of any school district;

(3) any law pursuant to which general ad valorem taxes or special assessments have been levied by a county, whether or not paid in full, including principal, interest and any penalties; or

(4) the running of any statute of limitation in force at the time the Public School Code becomes effective.

C. All incomplete proceedings had and taken under any law hereby repealed, preliminary to and in the acquisition or improvement, or acquisition and improvement, of any school district project, the holding and canvassing of any election, the creation of any school district, the consolidation of any school district, the levy and collection of any general ad valorem taxes or special assessments, or the issuance of any interim warrants, tax anticipation certificates, any bonds, any refunding bonds, or any other security appertaining to a school district project, any contract for the purchase of any such bonds or securities, which proceedings are in substantial compliance herewith, may, at the option of the local school board, be completed hereunder the same as if such incomplete proceedings had been had and taken pursuant to the provisions hereof.

Section 295. TEMPORARY -- SAVING CLAUSE. -- Reference in Sections 77-9-1 through 77-9-45 New Mexico Statutes Annotated, 1953 Compilation to the "Educational Retirement Act" means the Educational Retirement Act enacted July 1, 1957 and all laws amending or repealing sections thereof. Nothing in the Public School Code shall be construed to affect adversely the continued payment of benefits, either for retirement or disability, which are paid any person eligible for payments pursuant to Sections 73-12-34 through 73-12-91 New Mexico Statutes Annotated, 1953 Compilation (being Laws 1957, Chapter 197, Sections 1 through 58, Laws 1959, Chapter 351, Section 1, Laws 1961, Chapter 157, Sections 2 and 3 and Laws 1963, Chapter 131, Sections 1 through 3, as amended).

Therefore, we are of the opinion that Section 77-15-8 of the new Public School Code is prospective in effect. Because of this the date for computing when school bond elections may be held will be the effective date of the Code, July 1, 1967.

By: Paul J. Lacy

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