

Opinion No. 68-105

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BY: OPINION OF BOSTON E. WITT, Attorney General

TO: Mr. Robert W. Botts Counsel Bernalillo School Board of Education Suite 520
Simms Building Albuquerque, New Mexico

QUESTION

FACTS

Section 73-34-9, N.M.S.A., 1953 Compilation enacted in 1963 provides for the levying of "additional taxes" for the support of a technical and vocational institute if "the majority of those qualified electors voting in the election" approve the authorization for additional taxes. Section 73-34-14 (B), N.M.S.A., 1953 Compilation states that:

". . . the persons qualified to vote shall be qualified electors residing within an affected school district."

At the special election held November 7, 1967 Article VIII, Section 2 of the New Mexico Constitution was amended to read as follows:

"Taxes levied upon real or personal property for state revenue shall not exceed . . . **but laws may be passed** authorizing additional taxes to be levied outside of such limitation when approved by at least a **majority of the qualified electors of the taxing district who paid a property tax therein during the preceding year voting on such proposition.**"

QUESTION

What effect does the 1967 Constitutional amendment to Article VIII, Section 2 have on Section 73-34-9, N.M.S.A., 1953 Compilation and Section 73-34-14 (B), N.M.S.A., 1953 Compilation? Does the amendment make the statutes inoperative as they presently stand (because of the inconsistency between the amendments and the statutes as to the requirements for voting), or does the Constitutional Amendment have the effect of impliedly amending the statutes to require an additional qualification for voting?

CONCLUSION

The constitutional amendment has the effect of amending the statutes to provide that those who vote in a special election of the taxing district must have "paid a property tax therein during the preceding year"

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{*167} ANALYSIS

In reaching this conclusion two separate questions must be dealt with:

1. The effect of a Constitutional Amendment on already enacted statutes which are partially inconsistent.
2. The meaning to be given the words in the constitutional amendment "but laws may be passed authorizing additional taxes."

1. The effect of the Constitutional Amendment may be either to amend or repeal a prior inconsistent statutory provision. **Hawley v. Anderson**, 195 P. 358, 90 Or. 191. The question of which of these results is achieved is answered by looking to the actual and presumed intent of the legislature and to generally accepted rules of construction. It seems obvious that the intent of the legislature and the people of New Mexico in enacting the amendment to Article VIII, Section 2 of the New Mexico Constitution was not to make inoperative the very legislation which is the subject of and reason for the constitutional amendment.

The plain meaning of the language dictates that the intent of the legislature and the people of New Mexico was to add another qualification for voting to that of being a "qualified elector". To hold that the intent behind the constitutional amendment was to repeal and to make inoperative the legislation providing for the election is to give the constitutional amendment an unintended interpretation.

The rules of construction which courts have followed when faced with a constitutional amendment enacted subsequent to a partially inconsistent statute support this interpretation. In rejecting the idea that subsequent legislation or a constitutional amendment has the effect of repealing prior law the California Supreme Court in **Penziner v. West American Finance Company**, 74 P.2d 252 at 258, stated:

"In order for the second law to repeal or supersede the first the former must constitute a revision of the entire subject so that the court may say that it was intended to be a substitute for the first."

This view is also supported by the New Mexico case, **Ex-parte De Vore**, 136 P. 47, 18 N.M. 246. Since the amendment to Article VIII, Section 2 of the New Mexico Constitution mentions only one change in a comprehensive statutory scheme the rule cited above would dictate that no repeal of the entire statute or statutory scheme was intended.

Also it should be noted that since no express repeal exists in the Constitutional Amendment any repeal of prior legislation must be by implication. In discussing repeals by implication the New Mexico Supreme Court stated:

"Though repeals by implication are not favored yet courts declare them in cases where the last statute is so broad in its terms and so clear and explicit in its words as to show it was intended to cover the whole subject, and therefore, to displace the prior statute." State v. Romero, 140 P. 1069, 19 N.M. 1. (See also Penziner v. West American Finance Company, 74 P.2d 252, 10 C.2d 160).

There is no reason in either authority or policy why this rule of construction should be inapplicable in interpreting this constitutional amendment.

Therefore, it appears that the intent of the legislature and the people of New Mexico as best it can be determined by reference to the words of the amendment and rules of construction was to amend Sections 73-34-9 and 73-34-14 (B), N.M.S.A., 1953 Compilation to require {**168*} that those voting in the district elections be those qualified electors "who paid a property tax therein during the preceding year. . . ."

2. The second issue which must be faced in determining the effect of the amendment to Article VIII, Section 2 of the New Mexico Constitution is the meaning of the specific language of the amendment. The amendment reads in pertinent part:

". . . but laws may be passed authorizing additional taxes"

The question is whether this language should be construed to provide that only laws which are passed authorizing additional taxes after the enactment of the constitutional amendment are effective.

It is the opinion of this office that no such technical construction of the language of the amendment was intended. Sutherland Statutory Construction; 3rd Edition Vol. 1, Section 2025. The language under consideration was carried forward from 1933 when the proviso was added to the original section by a vote of 41,394 for and 27,541 against. To hold that the re-enactment of this language as part of an amendment to a different part of Section 2 has the effect of making inoperative all relevant laws passed previously would be to frustrate the intent of the people of New Mexico.

By: Jeff F. Bingaman

Assistant Attorney General