

## **Opinion No. 69-36**

April 25, 1969

**BY:** OPINION OF JAMES A. MALONEY, Attorney General Gary O'Dowd, Deputy Attorney General

**TO:** Maxine Gerhart, Administrative Assistant, Public School Finance Division, Department of Finance and Administration Santa Fe, New Mexico, Mr. J. Lee Cathey, Assistant District Attorney, Carlsbad, New Mexico

### **QUESTIONS**

#### **FACTS**

Carlsbad Municipal School District No. C is located entirely within the boundaries of Eddy County. The school district is located both within and without the municipal limits of Carlsbad. The Board of Education of Carlsbad Municipal School District No. C met on April 21, 1969, and adopted a formal resolution to levy additional millage of .002225 and requesting the City of Carlsbad to cede its levy of .002225 to the school district for 1969. In 1968 the school district levy was .002225. The resolution also set forth the financial arrangements by which the school district would remit sums to the municipality for services provided by the municipality. The City of Carlsbad adopted a formal resolution relinquishing the mill levy subject to the approval of the Local Government Division of the Department of Finance and Administration.

#### **QUESTIONS**

Is the approval of the Board of County Commissioners of Eddy County required, under Chapter 140, Laws of 1969, prior to submission of the two resolutions, mentioned in the facts set forth above, to the Public School Finance Division and the Local Government Division of the Department of Finance and Administration?

#### **CONCLUSION**

No.

### **OPINION**

#### **{\*55} ANALYSIS**

In Opinion of the Attorney General No. 69-15, issued February 26, 1969, this office said that school districts were limited in additional tax levies to the 5% per annum increase in tax rates provided for in Sections 72-4-9 and 72-4-10, New Mexico Statutes Annotated, 1953 Compilation. Subsequent to issuance of Opinion of the Attorney General No. 69-15, the 1969 session of the legislature enacted Chapter 140 which exempts school

districts from the limitation on proper tax increases provided in Section 72-4-9, supra, for the calendar year 1969. See Section 1, Chapter 140, Laws of 1969.

Before proceeding further it should be noted that this office has approved of the practice of municipalities ceding millage to school districts in Opinion of the Attorney General No. 65-17, issued February 2, 1965. This practice appears to have been recognized and approved of in Chapter 140, Laws of 1969.

It was pointed out above that Section 1 of Chapter 140 allows school districts to increase tax levies, without a millage increase, above the 5% limitation of Section 72-4-9, supra, for the calendar year 1969. Section 2 of Chapter 140 allows an increase in the tax levy of school districts for this calendar year by an increase in the millage as follows:

For calendar year 1969 no school district shall be allowed to levy taxes based on a higher millage than it levied in the calendar year 1968, **unless millage not ceded to the district in 1968 is specifically ceded to the district in 1969.** Provided however that the schools may levy taxes based on a higher millage **than allowed in the first sentence of this section** with the approval of the governing board of each county which contains within the exterior boundaries of the school district. (Emphasis supplied)

A plain reading of Section 2 reveals that no school district can increase its tax levy under Chapter 140 by assessing a higher millage not ceded to the district in 1968, "unless millage not ceded to the district in 1968 is specifically ceded to the district in 1969," or unless prior approval is given by the board of county commissioners of all counties in which the district lies.

Evidently it is contended that the second sentence of Section 2 applies to the increase that will occur when a municipality cedes its millage to a school district. We cannot agree. Under the second sentence of Section 2, approval of the county commissioners is necessary only for an increase in tax levy based on a higher millage other than is "allowed in the first sentence" of Section 2. Since the increase set forth in the facts above is allowed for in the first sentence of Section 2, approval of the county commissioners is not necessary.

To give any other construction to the second sentence of Section 2 would be to ignore the phrase "allowed in the first sentence of this section (Section 2)." What is allowed in the first sentence? The answer is only one thing, an increase {56} in millage of the school district by a municipality ceding part of its millage to the school district. Thus the second sentence requirement of county commission approval only applies to other types of millage increases than allowed in the first sentence of Section 2.