

Opinion No. 70-15

February 4, 1970

BY: OPINION OF JAMES A. MALONEY, Attorney General

TO: Mr. Donald J. Rea State Supervisor Private & Post-Secondary Schools Vocational Education Department of Education State Capitol Santa Fe, N.M. 87501

QUESTIONS

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May the question of a tax levy for the establishment and operation of an area vocational school be voted upon at the same time as the question of approval of the school itself?

CONCLUSION

See analysis.

OPINION

{*25} ANALYSIS

An area vocational school is created and implemented pursuant to the Area Vocational School Act, Sections 73-37-1 to 73-37-15, N.M.S.A., 1953 Compilation. Initially, a local school board presents to the state board of education a plan for the establishment and operation of an area vocational school. Section 73-37-3 (A), supra. Upon the state board's approval of the plan, the question of approval of the proposed school must be presented on a separate ballot either at the next scheduled school board election or at any separate election called for the purpose of approving the creation of the school. Section 73-37-4 (C), supra. After its approval of the plan, but not necessarily after approval of the school by the electorate, the state board officially designates the school as an area vocational school. Section 73-37-4 (D), supra. After this official designation by the state board, the local school board may submit at an election the question of the tax levy to establish and operate the area vocational school. Section 73-37-7, supra.

The only statutory prerequisite to submitting the question of the tax levy is that the state board first designate the school as an area vocational school. There is no express statutory requirement that the state board designate the school as an area vocational school only after the electorate has approved the school. Since it is possible for the state board to designate the school as an area vocational school before the electorate has approved the school, it is possible under the present statutory scheme to submit the question of the tax levy in an election even prior to the time of the electorate's actual approval of the school.

If the question of approval of the school is submitted at the next scheduled school board election, Section 73-37-4 (C), supra, contemplates that questions in addition to the one of approval of the school will be considered by the electorate and requires only that the question of approval of the school be submitted on a ballot separate from the other questions considered at that time. Since Section 73-37-7, supra, permits the question of approval of the tax levy to be submitted {26} in any election, the question could be considered at the next scheduled school board election at the same time as the question of approval of the school itself.

If the question of approval of the school were submitted at a separate election called for the purpose of approving the creation of the school, as provided in the alternative in Section 73-37-4 (C), supra, only that particular question could be considered in that particular election. Scrutinizing the constitutional and statutory provisions pertaining to special elections, however, this office finds no prohibition or restriction which would preclude holding such a special school election at the same time as another special school election. See New Mexico Constitution Article VII, § 1 (1969 P.S.). Compare Opinion of Attorney General, No. 55-169, issued July 26, 1955 where this office approved the submission of a special tax levy at the same time as the submission of constitutional revisions. There is no statutory or constitutional provision which would preclude the submission of the question of the tax levy in a special election at the same time as the special election on the question of approval of the school itself.

By: James C. Compton, Jr.

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