

Opinion No. 73-40

May 2, 1973

BY: OPINION OF DAVID L. NORVELL, Attorney General

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QUESTIONS

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Is the county gross receipts tax, which is levied to pay bonds used for the construction of the Rio Arriba County jail, to be discontinued when there is sufficient money to pay the bonds and interest in county funds; or is the statute to be followed literally and the tax to be continued until "the obligations are fully paid"?

CONCLUSION

The resolution authorizing the tax may be repealed if the special improvement account contains sufficient funds to pay both the principal and interest of the jail construction bonds at maturity.

OPINION

{*78} ANALYSIS

The question involves a portion of the County Gross Receipts Tax Act §§ 15-55-1 through 15-55-16, N.M.S.A., 1953 Comp., as amended, which actually consists of five statutes: Laws 1967, ch. 47; Laws 1968, ch. 20 and 41; Laws 1969, ch. 143; and Laws 1971, ch. 117. They are bound together and given a common "short title" by the 1971 enactment, which is compiled as § 15-55-16.

An examination of the titles of the first three bills as passed by the legislature reveals a common purpose: To provide first class counties, such as Rio Arriba County, with revenue to finance improvement of courthouse and jail facilities. Each of these three statutes contains a further classification of first class counties by population and assessed valuation, and each differs somewhat from the others in the type of construction to be financed and in the amount of bonded indebtedness that may be incurred therefor. However, the specific language with which we are here concerned, and which is quoted **infra**, is identical in the three statutes. We will quote from §§ 15-55-11, 15-55-13, and 15-55-14, being parts of Laws 1968, ch. 41, as amended by Laws 1969, ch. 143, under which Rio Arriba County is qualified by population and assessed valuation.

Section 15-55-11(D), **supra**, provides that the resolution authorizing the tax:

". . . shall provide that the revenue from such tax be deposited to pay the principal of and interest on the bonds hereinafter authorized."

Section 15-55-13, **supra**, provides that the costs of construction (including land acquisition, equipment and professional fees) shall

". . . be paid back from the proceeds of a county gross receipts tax."

It further provides,

"The board of county commissioners shall determine at its discretion the terms, covenants and conditions of the bonds, including, but not limited to, date of issuance, denomination, maturity, coupon-rates, call-features, premium, registration, refundability and other matters covering the general and technical aspects of their issuance. The bonds may be either serial or term . . . The bonds shall not be considered or held to be general obligations of the {*79} county issuing them, and are payable solely from the revenue accruing from the proceeds of a county gross receipts tax. The resolution authorizing the tax shall be irrevocable until the bonds are fully paid."

Finally, § 15-55-14 provides,

". . . Any money remaining in a special improvement account after the obligations are fully paid may be transferred to any other fund of the county."

The title of Laws 1968, ch. 41, is as follows:

"AN ACT RELATING TO TAXATION AND REVENUE; LEVYING A COUNTY GROSS RECEIPTS TAX ON THE PROCEEDS OF BUSINESSES AND SERVICES IN CERTAIN FIRST CLASS COUNTIES; AUTHORIZING COURTHOUSE AND JAIL BONDS TO BE ISSUED AND RETIRED WITH THE TAX PROCEEDS; PROVIDING FOR THE COLLECTION AND ADMINISTRATION OF THE TAX; AND DECLARING AN EMERGENCY."

The rules of statutory construction applicable to this question are as follows: The fundamental rule of construction is to ascertain and give effect to the intention of the legislature as expressed in the statute. **Stang v. Hertz Corp.**, 81 N.M. 60, 463 P.2d 45 (Ct.App. 1970) affirmed, 81 N.M. 348, 467 P.2d 14 (1970). This intention is to be determined primarily by the language of the act. **Winston v. New Mexico State Police Board**, 80 N.M. 310, 454 P.2d 967 (1969). Where possible, effect must be given to every part of the act. **State ex rel. Clinton Realty Co. v. Scarborough**, 78 N.M. 132, 429 P.2d 330 (1967). This includes the title. **Ortega v. Otero**, 48 N.M. 588, 154 P.2d 252 (1944). Resort may be had to the rules of construction only where there is an ambiguity or contradiction in the statute. **De Graftenreid v. Strong**, 28 N.M. 91, 206 P.2d 694 (1922). Statutes will be so interpreted as to avoid absurdity and injury to the

public. **Nye v. Board of Commissioners of Eddy County**, 36 N.M. 169, 9 P.2d 1023 (1932).

Applying these rules of construction, we find that although the language of the statute is clear enough there is an ambiguity or conflict in that § 15-55-13 requires the tax to be levied until the bonds are fully paid even if at an earlier date there is sufficient money in the fund to retire the bonds as they mature, including accrued interest.

All of the quoted statutory provisions except the last are for the protection of the bond purchasers and designed to make the bonds merchantable. The last-quoted provision disposes of any surplus and is an obvious legislative recognition of the fact that a tax levy, particularly one on gross receipts, could never be made to generate the precise amount of revenue needed to retire the bonds; it is not intended to provide a source of revenue for general purposes.

It is apparent that no legislative purpose would be served by continuing to levy the tax after sufficient funds are in the special improvement account to retire the bonds when they mature. To do so would not afford any more protection to the bondholders. Further, the bondholders would have no standing to complain if adequate funds were on hand in the special improvement account to pay them off in full; they are entitled to no more.

By: Dee C. Blythe

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