

Opinion No. 75-44

July 30, 1975

BY: OPINION OF TONEY ANAYA, Attorney General

TO: Thomas B. Keyse, Executive Secretary Natural Resources Conservation
Commission 321 W. San Francisco Santa Fe, New Mexico 87501

QUESTIONS

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When landowners petition the board of supervisors for an addition of land to a watershed district, may the board consolidate the hearing and referendum proceedings into one public meeting and provide a single combined notice?

CONCLUSION

Yes. See Analysis.

OPINION

{*123} ANALYSIS

This question involves interpretation of Section 45-5-38, NMSA 1953 Comp. of the Watershed District Act. According to Section 45-5-38(A), **supra**, whenever one or more landowners wish to have their land included in a watershed district, they must petition the board of supervisors of the appropriate watershed district. When the boundary of land described in the petition embraces lands other than the petitioners', the petition shall be signed by twenty-five or more of the landowners, if fifty or more such owners are involved.

As stated in Section 45-5-38(B), **supra**, within thirty days after such petition is filed, the board shall provide notice and conduct a public hearing pursuant to Section 45-5-26, NMSA 1953 Comp. to determine whether the lands described in the petition or any portion thereof shall be included in the district. However,

". . . If all the landowners in the territory involved are not petitioners a referendum shall be held within such territory as provided in Sections 45-5-26 through 45-5-29, NMSA 1953 of the Watershed District Act, before making a final determination"

In the instant case, all the landowners in the territory involved are not petitioners, thus the above quoted subsection is applicable, and the board must hold both a hearing and referendum for the landowners.

Subsection B, **supra**, speaks of a hearing which shall be held, and it specifies a referendum which shall also be held in a certain situation. But, there is no affirmative language to the effect that the hearing and referendum can be held one after the other in a single public meeting. However, subsection B does incorporate by reference Sections 45-5-26 through -29, **supra**, which must be considered with Section 45-5-38(B), **supra**. All of these related sections must be interpreted as an harmonious whole. See **State v. Scarborough**, 78 N.M. 132, 429 P.2d 330 (1967).

Section 45-5-26, **supra**, is concerned with the initial hearing and all of the attendant notice requirements, while Section 45-5-27, **supra**, contains the essential language regarding referendum. It must be recognized that this section refers primarily to conducting a referendum after determination of a need for creation of, not addition to, a watershed district. However, since this section was incorporated by reference, into Section 45-5-38(B), **supra**, it must be construed in that light.

Initially, Section 45-5-27, **supra**, states that:

"After the board of supervisors has made and recorded a determination that there is need, in the interest of the public health, safety and welfare, for creation of the proposed watershed district, it shall consider the question whether the operation of a district within the proposed boundaries . . . is administratively practicable and feasible"

As applied to Section 45-5-38 {**124*} (B), **supra**, the section quoted above would require that the board, sometime after deciding that additional lands should be added to the districts but before reaching a final determination, make a decision as to whether the addition of such land is "administratively practicable and feasible."

The statute goes on to state in pertinent part:

". . . To assist the board of supervisors in this determination, the board shall, within a reasonable time after entry of the finding . . . , hold a referendum within the proposed district upon the proposition of the creation of the district"

Again, there is no direct reference to the question of whether or not the hearing and referendum proceedings may be consolidated into one public meeting, only that the referendum shall be held "within a reasonable time after entry of the finding." However, analysis of all the relevant statutes reveals the legislative intent. As stated in **State v. Scarborough, supra**, "The practical inquiry in construing statutes is, of course, to determine and give effect to the legislative intent" 78 N.M. 132, 135.

The purpose of the phrase "within a reasonable time after entry of the finding" was to insure that there was not an extensive delay between the hearing and referendum. The obvious rationale behind holding a referendum, similar to that of a public hearing, was to provide the board with input from the landowners to assist the board in their final determination as to the addition of land to the watershed district. The optimal time for consideration of this type of information would be as soon as possible after the public

hearing. In view of the circumstances, there is no reason why the referendum cannot be conducted immediately following the hearing. That would certainly be "within a reasonable time."

Section 45-5-27, **supra**, also incorporates Section 45-5-26, **supra**, concerning notice provisions. Nothing in this section would prohibit the combining of notices for both the hearing and the referendum. The landowners would have adequate notice of both proceedings. There appears to be no justification, either in the statutory language or practical considerations, for waiting any period of time to conduct completely separate meetings for a public hearing and referendum with the incidental administrative inconvenience and monetary expenditures. Statutes should be construed in the most beneficial way of which their language is susceptible in order to prevent hardship or injustice, and to favor the public interest and convenience. **City Comm'n of Albuquerque v. State**, 75 N.M. 438, 405 P.2d 924 (1965).

Thus, the legislative intent is that the board may, after the hearing and tentative decision to include additional lands, immediately conduct a referendum. Under these circumstances, a combined notice that complies with all the statutory provisions is sufficient for both the hearing and referendum.

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