

Opinion No. 81-30

November 18, 1981

OPINION OF: Jeff Bingaman, Attorney General

BY: Jill Z. Cooper, Deputy Attorney General

TO: Honorable Joseph A. Fidel, New Mexico State Senator, P.O. Box 968, Grants, New Mexico 87020

FACTS

On November 4, 1980, the voters of Socorro County approved a tax levy in an election called on the question:

"Shall the Board of County Commissioners levy a tax in the amount of four and one-quarter (4-1/4) mills for the operation of Socorro General Hospital, such levy to be used for a period of eight (8) years?"

After studying the cost of repair of the existing hospital, the hospital board voted to turn the hospital back to the county and build a new hospital at another site at an approximate cost of \$4,630,000.

QUESTIONS

May the tax revenue generated by the mill levy approved for the operation of the Socorro General Hospital be used for the construction of a new hospital?

CONCLUSIONS

No.

ANALYSIS

A tax levy approved at the 1980 general election would have been governed by Section 4-48-11, NMSA 1978 which authorized a board of county commissioners to levy a property tax for the operation and maintenance of a county hospital and by Section 4-48-14, NMSA 1978 which authorized the board of county commissioners to submit the tax levy question to the voters in the event such taxes would exceed the twenty mill limitation prescribed by Article VIII, Section 2, New Mexico Constitution or any other statutory limitation. Pursuant to Chapter 83 of Laws 1981, Section 4-48-11 was repealed and Section 4-48-14 was amended and recompiled as Section 4-48B-15, NMSA 1978 of the Hospital Funding Act which took effect on April 1, 1981.

In order to make the transition from the old laws to the new laws, the Legislature provided at Section 4-48B-16, NMSA 1978 of the Hospital Funding Act that

"All elections authorizing a mill levy assessment for hospital use which were held prior to the effective date of the Hospital Funding Act are declared valid for the use and purposes of that act, and such mill levy may be imposed and collected during the period of the authorization or any continuation thereof, and the funds may be expended in accordance with the provision of that act. Any institution specifically named in any election is hereby deemed qualified as a county hospital or contracting hospital, as the case may be, and any authorization of the expenditure of public funds by a county hospital in any previous election is declared by the legislature to be authorization of expenditure of mill levy funds for a county hospital under the provisions of the Hospital Funding Act."

Thus, counties which held a hospital mill levy election prior to the new law are expressly authorized to expend public funds for the operation of a hospital specifically named in the election. As a rule, the expression of one thing excludes all others. See, **In Re Attorney General** , 2 N.M. 49 (1881).

Generally public funds generated by a tax levy approved by the voters may be spent only for the purposes specified on the ballot. Accordingly, in **Geer-Melkus Construction Co. v. Hall County Museum Board** , 186 Neb. 615, 185 N.W.2d 671, 675 (1971), the Court held that tax funds could not be used to construct a museum when the question submitted to the voters limited the use of the tax levy to the "maintenance" of a museum which would be constructed with funds donated for that purpose. Similarly, in **Howe v. DeSoto Parish School Board** , 373 So.2d 248, 250 (La. 1979), revenues generated by a tax levy authorized by the voters for acquiring and improving school facilities may not be placed in the general fund of the school district.

In conclusion, therefore, funds generated by a mill levy approved specifically for the operation of the Socorro General Hospital may not be used to construct another hospital.

ATTORNEY GENERAL

Jeff Bingaman, Attorney General