

Opinion No. 87-52

September 2, 1987

OPINION OF: HAL STRATTON, Attorney General

BY: Andrea R. Buzzard, Assistant Attorney General

TO: Alan D. Morgan, State Superintendent of Public Instruction, Department of Education, Education Bldg., Santa Fe, N.M. 87501-2786

QUESTIONS

1. For purposes of calculating the state's distribution to a school district in accordance with the Public School Capital Improvements Act, does the phrase, "the product obtained by the tax rate imposed in the district," contained in Section 22-25-9 NMSA 1978 refer to the tax rate authorized by Section 22-25-3 NMSA 1978 or the lower rate required by operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978?
2. Does the two percent administrative charge authorized by Section 7-38-38.1 NMSA 1978 affect the state's distribution to a school district pursuant to Section 22-25-9 NMSA 1978?

CONCLUSIONS

1. The quoted phrase refers to the rate authorized by the voters pursuant to Section 22-25-3 NMSA 1978; provided, however, that such rate may not exceed that rate required by operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978.
2. No.

ANALYSIS

The Public School Capital Improvements Act, Sections 22-25-1 to 22-25-10 NMSA 1978, permits a local school board to levy a property tax for capital improvements, such as erecting, remodeling, and maintaining public school buildings, and for purchasing or improving public school grounds. The qualified electors of a school district must approve the property tax. The state may contribute monies from the public school capital improvements fund in accordance with the mathematical formula contained in Section 22-25-9 NMSA 1978. The issue is whether the state, in applying that formula and in certifying the district's rate pursuant to Section 22-25-7 NMSA 1978, must adhere to the rate limitation provisions of Section 7-37-7.1 NMSA 1978, which provisions circumscribe the rate otherwise authorized by the school district's voters.

Section 22-25-9 NMSA 1978 of the Public School Capital Improvements Act provides, in part:

The director shall distribute to any school district that has imposed a tax under the Public School Capital Improvements Act [22-25-1 to 22-25-10 NMSA 1978] an amount from the public school capital improvements fund that is equal to the amount by which the revenue estimated to be received from the imposed tax, at the rate certified by the department of finance and administration in accordance with Section 22-25-7 NMSA 1978, assuming a one hundred percent collection rate, is less than an amount calculated by multiplying the district's first forty-days' total program units times thirty-five dollars (\$35.00) and further multiplying the product obtained by the tax rate imposed in the district under the Public School Capital Improvements Act. The distribution shall be made by December 1 of each year that the tax is imposed in accordance with Section 22-25-7 NMSA 1978.

The tax rate imposed in the district is that rate which the department of finance and administration certifies pursuant to Section 22-25-7 NMSA 1978, which provides, in part:

If as a result of an election held in accordance with the Public School Capital Improvements Act...the tax rate shall be certified... by the department of finance and administration **at the rate specified in the resolution authorized under Section 22-25-3 NMSA 1978 or at any other lower rate required by operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978 upon the rate specified in the resolution** and be imposed at the rate certified in accordance with the provisions of the Property Tax Code.

(emphasis supplied). See also Section 22-25-8 NMSA 1978 (directing that a local school board decrease the amount of any tax levy imposed pursuant to the Public School Capital Improvements Act "for any year in which the decrease is required by operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978").

Any property tax that the a school district's voters approve may not exceed two dollars on each one thousand dollars of net taxable value of property allocated to a school district. See Section 22-25-3 NMSA 1978. A consistent reading of the cited statutes reflects, however, that this rate, even though approved, may not exceed the rate limitation provisions in Section 7-37-7.1 NMSA 1978. If such approved rate exceeds that permitted by operation of Section 7-37-7.1 NMSA 1978, the department of finance and administration must certify the lower rate in accordance with Section 22-25-7 NMSA 1978.

Section 7-37-7.1(A) NMSA 1978 affirms this conclusion. That subsection provides, in part:

A. [I]n setting... the other rates and impositions authorized in Paragraphs (2) and (3) of Subsection C of Section 7-37-7 NMSA 1978 neither the department of finance and administration nor any other entity authorized to set or impose a rate or assessment shall set a rate or impose a tax or assessment that will produce revenue from residential and nonresidential property in a particular governmental unit in excess of a dollar

amount derived by multiplying the growth control factor by the revenue due from the imposition on residential and nonresidential property for the prior property tax year in the governmental unit of the rate, imposition or assessment for the specified purpose.... [N]o tax rate... that will produce revenue from either class of property in a particular governmental unit in excess of the dollar amount allowed by the calculation shall be set or imposed.

"Any entity authorized to set or impose a tax or assessment" includes local school districts imposing property taxes pursuant to the Public School Capital Improvements Act. Section 7-37-7(C)(2) NMSA 1978, mentioned in Section 7-37-7.1(A) NMSA 1978, authorizes "those rates or impositions authorized under provisions of law outside of the Property Tax Code that are for the use of the governmental unit indicated in those provisions." Section 7-37-7 (C)(2) NMSA 1978, therefore, encompasses the levy authorized by the Public School Capital Improvements Act, and such levy, by the language of Section 7-37-7.1 NMSA 1978 and Section 22-25-7 NMSA 1978, is subject to the limitation provisions of Section 7-37-7.1 NMSA 1978.

Accordingly, we conclude that the "tax rate imposed in the district under the Public School Capital Improvements Act", is that rate certified in accordance with Section 22-25-7 NMSA 1978, which incorporates Section 7-37-7.1 NMSA 1978. This certified rate must be that which the voters approve unless the operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978 requires a lower rate, in which case, the lower rate must be certified.

As to your second question, Section 7-38-38.1 NMSA 1978, enacted in 1986, is described in its heading: "Recipients of revenue produced through ad valorem levies required to pay counties administrative charge to offset collection costs." It provides, in part:

A. As used in this section:

(1) "revenue" means money for which a county treasurer has the legal responsibility for collection and which is owed to a revenue recipient as a result of an imposition authorized by law of a rate expressed in mills per dollar or dollars per thousands of dollars of net taxable value of property, assessed value of property or a similar term, including, but not limited to, money resulting from the imposition of general property taxes, special levies for special purposes and benefit assessments....

(2) "revenue recipient" means the state and any of its political subdivisions that are authorized by law to receive revenue.

B. Prior to the distribution to a revenue recipient of revenue received by a county treasurer, the treasurer shall deduct as an administrative charge and distribute to the "county property valuation fund", hereby created, an amount equal to two percent of the revenue received.

The "revenue recipient" from a levy imposed pursuant to the Public School Capital Improvements Act is a school district. The county treasurer collecting the tax for the district must deduct from such revenue two percent as an administrative charge before distributing the revenue to a school district, an involuntary political subdivision of the state created for state purposes to aid the state in the administration of education. *McWhorter v. Board of Education*, 63 N.M. 421, 423, 320 P.2d 1025, 1026, 1027 (1958). The issue is whether the state must absorb the two percent administrative charge or whether the school district must bear it.

Section 22-25-9 NMSA 1978 requires that the director [of the public school finance division of the department of education, in accordance with article XII, § 6(E) of the Constitution of New Mexico] determine the amount of revenue "estimated to be received from the imposed tax, at the rate certified...., assuming a one hundred percent collection rate." To the extent this estimate is less than the amount of money derived by performing the additional mathematical calculations described in that section, the state's public school capital improvements fund must pay the school district the difference, subject to sufficient monies in that fund. The revenue estimate mentioned in Section 22-25-9 NMSA 1978 assumes one hundred percent collection and makes no provision for reducing this estimate by the district's two-percent collection fee payable to the county treasurer. Further, we understand that the legislature, in appropriating monies to the state's public school capital improvements fund, did not appropriate an additional two percent representing anticipated school district charges pursuant to Section 7-38-38.1 NMSA 1978. Consequently, we conclude that the school district, not the state's public school capital improvements fund, must absorb this fee of two percent, and that such fee may not be used to reduce the revenue estimate that Section 22-25-9 NMSA 1978 requires.

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