Opinion No. 88-34

May 17, 1988

OPINION OF: HAL STRATTON, Attorney General

BY: Carol A. Baca Assistant Attorney General

TO: The Honorable Al Valdez, State Representative, District 12, 729 Nashville, S.E., Albuquerque, NM 87105

QUESTIONS

1. Is the Middle Rio Grande Conservancy District subject to the restrictions on the timing of elections contained in Section 1-4-10 NMSA 1978?

2. Can a person stand for election for the board of directors of the Middle Rio Grande Conservancy District if that person resides in a county in which part of the District is located but outside the District itself?

CONCLUSIONS

1. No.

2. No.

ANALYSIS

The Middle Rio Grande Conservancy District (the "District") was organized under 1923 N.M. Laws, Ch. 140, to provide flood protection, land drainage and an irrigation system. In 1927 the legislature passed the Conservancy Act[1] , which supplanted the 1923 law. Middle Rio Grande Conservancy Dist. v. Chavez, 44 N.M. 240, 243, 101 P.2d 190, 191 (1940). In 1975, the legislature enacted Sections 73-14-18 through 73-14-32 NMSA 1978, which abolished the District's appointed board of directors and provided for election of succeeding boards.[2]

Section 73-14-24(A) requires the District to hold its 1988 election on the "first Tuesday of May." The first Tuesday of May in 1988 is May 3. Section 1-4-10 of the Election Code, Sections 1-1-1 to 1-23-7 NMSA 1978, states: "No municipal, school or special district election shall be held within forty-two days prior to any statewide election." A statewide primary election will be held on June 7, 1988. The legislature enacted Section 1-4-10 in 1977. The question is whether Section 1-4-10 supersedes or otherwise affects the election date that Section 73-14-23(A) establishes.

The Election Code does not define a "special district election." Sections 1-1-19 and 1-8-17, however, use the similar terms "special district elections" and "special district

offices." The New Mexico Court of Appeals, in Gonzales v. Middle Rio Grande Conservancy Dist., 106 N.M. 426, 428-29, 744 P.2d 554, 556-57 (Ct. App. 1987), stated without discussion that a District board election is a "special district election" to which Section 1-1-19 applies. That section provides that, under certain circumstances, some provisions of the Election Code apply to "special district officer or special district bond or special district elections." Although unclear, we assume the court relied on the fact that Chapter 73, NMSA 1978, which applies to all conservancy districts and several other entities such as water and sanitation districts, is entitled "Special Districts."

We conclude that, even if a District election is a "special district election" within the meaning of Section 1-4-10, the District still is required to hold its elections on the dates specified in Section 73-14-24(A). Under the rules of statutory construction, repeals by implication are not favored. A general statute will not repeal by implication a statute of limited scope that addresses a particular matter. Waltom v. City of Portales, 42 N.M. 433, 437, 81 P.2d 58, 60 (1938). For example, in Levers v. Houston, 49 N.M. 169, 176-77, 159 P.2d 761, 756-66 (1945), the court held that subsequent enactment of a general statute governing appeals from probate court to district court did not repeal a special statute prescribing the time limits for perfecting district court appeals of probate court orders that allowed or disallowed claims. The rules set forth in Waltom and Levers apply to Sections 1-4-10 and 73-14-24(A). Section 73-14-24(A), is a specific statute that governs election dates for certain conservancy districts. Section 1-4-10 is part of an act that generally addresses state elections. See Section 1-1-19. Section 73-14-24(A), therefore, is unaffected by the later enactment of Section 1-4-10.

The second question is whether a person must reside in the District to be eligible for a position on the District's board of directors. In Gonzales, supra, the New Mexico Court of Appeals held that Section 1-1-19 requires application of Election Code requirements and procedures to District elections, unless a statute that governs conservancy district elections specifies a different rule or procedure. Id. at 428-29; 744 P.2d at 556-57. Inasmuch as Sections 73-14-19, 73-14-20 and 73-14-25 NMSA 1978 specify the qualifications for the members of the District's board of directors, we believe these statutes answer your question.

Section 73-14-25 requires a person who desires to become a candidate for the District's board of directors to file a notice of candidacy stating that he is a qualified elector of the district and meets the qualifications of a director "as required by law". Section 73-14-20 defines a qualified elector as a natural person who is over the age of majority and "owns real property within the benefitted area of the conservancy district or resides on and owns legal or equitable title in tribal lands". Section 73-14-19 specifies the qualifications for board members. The board consists of three directors representing the most populous county within the District, one director representing the portions of each of the remaining counties within the District, and one at-large member. "[E]ach director" must be a qualified elector of the conservancy district and must reside "within the conservancy district and the county from which he is elected". Therefore, each member of the District's board of directors must reside within the conservancy district. A person running for a director's position representing a particular county also must reside in that

particular county. A person running for the at-large position must reside in the conservancy district but in no particular county within the conservancy district. In addition, all directors must meet Section 73-14-20's definition of a qualified elector.

ATTORNEY GENERAL

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GENERAL FOOTNOTES

n1 The Act is scattered throughout Chapter 73, NMSA 1978. See the catch-line in the notes to Section 73-14-1 NMSA 1978 for a complete list of the sections in which it is codified.

n2 Three other conflicting acts affecting conservancy district board elections were passed in 1943, 1955 and 1961. The 1943 act, Sections 73-14-54 to 73-14-69 NMSA 1978, is inapplicable to conservancy districts of more than 100,000 acres on the date of the act and formed prior to July 1, 1952. See id. The 1961 act, Sections 73-14-70 to 73-14-88 NMSA 1978, applies only to conservancy districts of having between 15,000 and 30,000 acres on July 1, 1961 and conservancy districts formed after that date. Based on the District's representations of its size on the relevant dates, we conclude that the 1943 and 1961 acts are inapplicable to the District. See also, 1953-1954 Att'y Gen. Op. 5658 (concluding that Section 77-2743 NMSA 1941 (now Section 73-14-69 NMSA 1978) exempted the District from Section 77-2742 NMSA 1941 (now Section 73-14-68 NMSA 1978).)

The applicability of the 1955 act, Sections 73-18-25 to 73-18-43 NMSA 1978, is more difficult to analyze. Section 73-18-25 describes the conservancy districts to which the 1955 act applies:

This act shall apply to conservancy districts organized under the laws of the State of New Mexico and having a contract with the United States of America under the reclamation laws of the United States . . . and to those and only those districts which have an area of land of all classes within the exterior boundaries of the district of more than 100,000 acres and less than 125,000 acres.

(emphasis added.)

The District has informed us that it entered into a reclamation contract with the United States prior to the effective date of the 1955 act, but that its size exceeded 125,000 acres on the act's effective date. The question becomes, therefore, whether the words "those and only those districts" modify and limit the description of covered conservancy districts prior to the conjunction. We believe that they do. The legislature is presumed to use no surplus words; each word and phrase of a statute should have attributed to it some meaning. Stang v. Hertz, 81 N.M. 348, 351, 467 P.2d 14, 17 (1970). If the words "those and only those" are not redundant, they must be read to refer back to

conservancy districts with reclamation contracts and to limit the act's applicability to only those conservancy districts that had reclamation contracts and between 100,000 and 125,000 acres on the act's effective date. We conclude, therefore, that the 1955 act also is inapplicable to the District.