

Opinion No. 45-4714

May 11, 1945

BY: C. C. McCULLOH, Attorney General

TO: Mr. E. F. Carter Accountant-Engineer Public Service Commission Santa Fe, New Mexico

{*65} I have your letter of May 4, 1945 wherein you request an opinion concerning the effect of House Bill No. 149 which will appear as Chapter 132 of the Laws of 1945, upon previous statutes passed by the Legislature concerning the issuance of Revenue bonds by municipalities. Your specific question in this connection is whether or not Chapter 132 of the Laws of 1945 repeals by implication Section 14-3522 of the 1941 Compilation and Section 14-3530 of the 1943 Supplement to the 1941 Compilation.

Section 14-3522 provides as follows:

{*66} "None of the refunding revenue bonds authorized under the provisions of this act shall be issued unless approved in writing by the New Mexico Public Service Commission. **The New Mexico Public Service Commission is hereby granted general supervisory powers over the matter of the issuance of said bonds.**"

Section 14-3530 of the Supplement provides in part as follows:

"No securities shall be issued for purchase or construction of any such utility unless and until the proposed issue of securities shall have been submitted to and approved by the New Mexico public service commission as to amount, date of issue, and maturity, rate of interest, and general provisions therein contained."

Section 14-3531 of the Supplement provides as follows:

"This act shall not apply to any existing municipally owned utility, nor to the issue of revenue bonds to provide funds for necessary improvements, extensions, repairs and betterments of such utility, whether the same be acquired before or after the passage of this act."

Section 5 of Chapter 132 of the Laws of 1945 provides that whenever it is declared necessary by the governing body, by ordinance duly adopted, incorporated towns or villages are hereby authorized to make and issue revenue bonds. Section 7 of such Chapter provides further that the boards of trustees of towns and villages issuing revenue bonds may authorize the issuance thereof by ordinance adopted by the affirmative vote of two-thirds of all the members of said governing bodies.

It is noted that the 1945 act makes no reference to the Public Service Commission, nor does it purport to directly amend or repeal the prior statutes referred to above

concerning the authority of the Public Service Commission, which sections gave the Public Service Commission supervisory powers over the matter of the issuance of revenue bonds and refunding revenue bonds, and provides that such securities may not be issued without the approval of the Public Service Commission. The question of a repeal of prior statutes by implication has been before our court repeatedly.

See *State v. Davidson*, 28 N.M. 653, 217 P. 240; *State v. Fidelity and Deposit Co.* 36 N.M. 166, 9 P 2d 700; *Gutierrez v. Gober* 43 N.M. 146, 87 P. 2d 437; *Walton v. City of Portales* 42 N.M. 433, 81 P. 2d 58; *White v. Board of Education of Silver City*, 42 N.M. 94, 75 P. 2d 712; *State v. Moore* 40 N.M. 344, 59 P. 2d 902; *A.T. & S.F. Railroad Co. v. Town of Silver City* 40 N.M. 305, 59 P. 2d 351; *James v. Board of County Commissioners*, 24 N.M. 509, 174 P. 1001; *In re Martinez' Will* 47 N.M. 6, 132 P 2d 422; *Territory v. Matson*, 16 N.M. 135, 113 P. 816; *State v. Romero* 19 N.M. 1, 140 P. 1069; *Territory v. Riggle*, 16 N.M. 713, 120 P. 318; *State v. Romero* 32 N.M. 178, 253 P. 20.

In the foregoing cases our Supreme Court has repeatedly stated and held that repeals by implication are not favored, and that a court must give effect, if possible, to both of two statutes covering the same matter, wholly or partly, unless absolutely irreconcilable, and that it will not be presumed that the Legislature intended to repeal a statute unless later statute is so broad in its terms and so clear and explicit in its language as to show such intent.

It has further been repeatedly held in the above cited cases that where two statutes can be construed together and thus preserve the objects to be obtained by each, they should be so construed if no contradiction, repugnancy, absurdity or unreasonableness will result.

In connection with the statutes involved, it is my opinion that they {*67} may be construed together and therefore it is the duty of this office and of any court passing upon this matter to so construe the statutes involved.

It is therefore my opinion that in addition to the specific requirements for issuing revenue bonds contained in Chapter 132 of the Laws of 1945, that municipalities should further comply with the provisions concerning the issuance of such bonds contained in the previous statutes set forth above.

By HARRY L. BIGBEE,

Asst. Atty. General