

Opinion No. 49-5218

May 24, 1949

BY: JOE L. MARTINEZ, Attorney General

TO: Victor C. Breen Assistant District Attorney Ninth Judicial District Tucumcari, New Mexico

{*42} I have your letter of April 27, 1949, stating that the village of San Jon is contemplating sewer construction under the provisions of Section 14-3608 of the 1941 {*43} Compilation, with all costs to be borne by special assessment on abutting property. You ask two questions concerning the application of this statute to certain fact situations arising from this construction:

"(1) The business properties which will be served by the sewer will derive many times the benefits from the sewer that a single residential owner will derive although their front footage on the sewer line may be identical. They want to know whether Section 14-3609 prevents different assessments for business and residential property in accordance with the estimated benefits derived from the sewer?"

Section 14-3609 of the 1941 Compilation provides, in part, as follows:

"If said city council or board of trustees shall elect to assess against said lots and pieces of land abutting on said line of sewer or sewers, or so near thereto as to be, in the opinion of said city council or board of trustees, benefited by the construction thereof, a part or all of the cost of such construction, they shall record the amount so elected to be so assessed **and shall proceed to apportion said amount among said lots and pieces of land, according to the frontage thereof, so that each front foot of such lots and pieces of land shall pay its proportionate share of the total cost of such construction**, and shall assess such amount so determined against each of such lots and pieces of land, * * *." (Emphasis ours)

You will note that this section provides that the cost shall be appropriated among the pieces of land according to the frontage so that each front foot of such land pays its proportionate cost. The determination of proportionate cost is based, therefore, on the amount of land involved, rather than the benefits which the land owners may derive as a result of the type of business which they conduct.

It is, therefore, the opinion of this office that Section 14-3609 prevents different assessments for business and residential properties based upon estimated benefits derived from the sewer system.

"2. The proposed sewer line will run up to the boundary of the property owned by the San Jon Municipal School District. The tract owned by the school and which will be served by the sewer is not platted into lots but is an unnumbered tract which is

equivalent in size to 14 regular 25 foot lots. They wish to know whether the assessment against the school property can properly be made in an amount equal to the regular assessment on 14 lots? Since the tract is unplatted and the sewer comes to the property on one side they feel that the whole tract can properly be considered as abutting property."

The portion of Section 14-3609 above quoted permits the assessment of property which does not abut upon the proposed sewer line, but is so near thereto as to be benefited by the construction. The determination of whether or not any such property will be benefited is left to the city council or board of trustees as the case may be. The assessment, however, is still based upon the frontage of the land to be benefited. If the governing body of the village of San Jon determines that this property will be benefited by the proposed sewer line, it is my opinion that an assessment may be made against such property based upon the frontage thereof.

{*44} With kind personal regards, I am