

Opinion No. 54-6038

November 8, 1954

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. Paul Tackett District Attorney Second Floor Court House Albuquerque, New Mexico

{*507} You have requested the opinion of this office relative to whether or not the City of Albuquerque may assess charges for water and/or sewer main services against all property within the probable service area of such mains, even though the property against which the charge is to be made is not developed or may not be developed for an undetermined time, and is not connected or abutting the main.

This problem requires an examination of §§ 14-350 2and 14-3637, N.M.S.A., 1941 Comp., and the relevant portion of the said sections of our statute are quoted below.

"14-3502. All cities and incorporated town constructing water, gas or electric light works are authorized to assess from time to time, in such manner as they shall deem equitable, upon each tenement or other place supplied with water, gas or electric lights, such water, gas or electric light rents as may be agreed upon by the council or trustees, or upon each **vacant lot in front of which the pipes commonly called 'street mains' are laid**, but such vacant lots as do not take water from such street mains shall not be assessed more than one-half as much as may be assessed against the same amount of frontage of lots occupied by a one-story building; . . ."

"14-3637. Municipal corporations **having sewers** shall have the right by general ordinance to levy annual maintenance or service charges, and special assessments upon improved and **unimproved lots and land adjoining streets and alleys through which sewer pipes are laid, and upon premises and improvements otherwise situated but having sewer connection**, either upon the front foot, volume of sewage, or number of outlets basis, such as may be just and reasonable, for the purpose of defraying the expense of maintaining, enlarging, extending, constructing, operating and keeping in repair said sewers and a suitable sewage disposal plant, and paying the interest and principal on sewer revenue bonds issued to pay for any such construction, . . ."

In view of the wording of the above cited statutes, it is our opinion that the city could not assess charges for water facilities against property within the probable service area of the water mains, even though the property might be undeveloped, unless the property abuts on the water main, or is served with water as stated in § 14-3502.

With respect to sewer assessments, it is our opinion that the intent of the Legislature was that where a sewer system is actually in existence, as opposed to the contemplation of the construction of a sewer system as set forth in § 14-3609, the city

could not assess charges for sewer facilities against property within the probable service area unless the property adjoins the streets or alleys {**508*} through which the sewer pipes are laid or unless the property otherwise situated has sewer connections affixed thereto.

We trust the above satisfactorily answers your question.

By: J. A. Smith

Assist. Attorney General