

Opinion No. 55-6126

March 10, 1955

BY: RICHARD H. ROBINSON, Attorney General

TO: D. D. Monroe, Chief Tax Commissioner, State Tax Commission, Santa Fe, New Mexico

In your letter dated March 1, 1955, you refer to § 75-32-10 of the 1953 Compilation, which provides that conservancy district assessments shall be collected and the liens thereon enforced in the same manner as assessment of taxes for state and county purposes. You also refer to § 72-7-4 of the 1953 Compilation, which directs county treasurers to transmit to the State Tax Commission fund an amount equal to 1/3 of the interest collected upon delinquent taxes. You inquire whether 1/3 of the interest collected by county treasurers on delinquent conservancy assessments should be remitted to the Tax Commission Fund.

Special assessments for conservancy district purposes are benefit assessments and are not general property taxes within the contemplation of the Constitution, regarding equality of taxes or limiting the total taxes that may be levied to 20-mills. *Hamilton vs. Arch Hurley Conservancy District*, 42 NM 86, 75 P. 2d 707; *Tondre vs. Garcia, County Treasurer*, 45 NM 433, 116 P. 2d 584.

§ 75-32-10 relates to conservancy assessments levied to meet any indebtedness due to the United States pursuant to the reclamation law. The fact that the assessments are required to be collected in the same manner as general taxes does not change the nature of the assessments.

§ 75-30-16 is a part of the 1927 Conservancy District Act and would apply to conservancy assessments generally. This section provides as follows:

"The revenue laws of this state for the assessment, levying, and collection of taxes for state and county purposes, except as herein modified, shall be applicable for the purposes of the district in the collection of assessments including the enforcement of penalties and forfeiture for delinquent taxes. All interest and penalties that may be collected on delinquent assessments levied and assessed for district purposes shall be by the respective county treasurers delivered to the treasurer as herein provided for the delivery of assessments collected by such county treasurer."

§ 72-7-4 of the 1953 Compilation was amended in 1937 to provide for the payment of 1/3 of the interest collected upon delinquent taxes to the Tax Commission Fund. In 1939, § 72-7-32 was passed providing for payment to the Tax Commission Fund by county treasurers of 10% of all delinquent taxes, interest and penalty collected, after the time when the Tax Commission acquires jurisdiction to make collection of delinquent taxes. In connection with the 10% transferred to the Tax Commission Fund, in Opinion

No. 3124, written on April 29, 1939, this office ruled that the legislature did not intend county treasurers to transmit 10% of delinquent conservancy assessments to the Tax Commission Fund.

In view of the specific language in § 75-30-16, requiring county treasurers to deliver all interest and penalties collected upon conservancy assessments to the treasurer of the conservancy district and in view of the distinction between special assessments for benefits in conservancy districts and general property taxes, it is our opinion that county treasurers are not required to remit 1/3 of the interest collected on delinquent conservancy assessments to the State Tax Commission.

By C. C. McCulloh

Assistant Attorney General