

Opinion No. 57-55

March 21, 1957

BY: OPINION OF FRED M. STANDLEY, Attorney General Paul L. Billhymer, Assistant Attorney General

TO: Mr. John C. Hays, Administrator, Social Security Division, Public Employees' Retirement Assn., P. O. Box 2237, Santa Fe, New Mexico

QUESTIONS

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Is the Elephant Butte Irrigation District a political subdivision?

ANSWER

Yes.

OPINION

ANALYSIS

A good definition of political subdivision will be found in *Commissioner of Internal Revenue vs. Shamberg's Estate*, 144 F.2d 998, and reads as follows:

"The term 'political subdivision' is comprehensive and denotes any division of a state made by proper authorities thereof, acting within their constitutional powers, for purposes of carrying out a portion of those functions of state which by long usage and inherent necessities of government have always been regarded as public."

The courts that have dealt with the question of whether Irrigation Districts are political subdivisions have come up with various answers, but the majority of the courts to which this question has been addressed have come to the conclusion that Irrigation Districts are generally a corporate organization for a public purpose exercising some governmental functions. See 94 C.J.S.. "Water" Section 318 at pages 265 and 266 for the collection of cases dealing with this subject.

As it pointed out in the above quoted definition, organizations may be political subdivisions for certain purposes and yet strictly speaking, not come within the strict sense of the meaning of this term. However, in New Mexico in view of the fact that New Mexico has a comprehensive water program which clearly makes the water of the State of New Mexico subject to strict State control, and since the legislature has seen fit to provide for a comprehensive system of control of the use of water, and have developed various agencies for the exercise of the control of the use of water, one being an

Irrigation District, we believe that it cannot be doubted that an Irrigation District is carrying out a function of the State of New Mexico.

In the Handbook For State Old Age and Survivors Insurance Administrators, Section 4 of the Introduction, defines political subdivisions as follows:

"Generally, a political subdivision is a jurisdictional division or district of a state constituting a separate entity."

By this definition it can be seen clearly that Irrigation Districts would be a separate entity.

From the above, we conclude that an Irrigation District organized within the laws of the State of New Mexico, is a political subdivision for the purpose of the Old Age and Survivors Insurance Program.