

Opinion No. 58-26

February 11, 1958

BY: OPINION OF FRED M. STANDLEY, Attorney General Fred M. Calkins, Jr.,
Assistant Attorney General

TO: Mr. Patrick F. Hanagan, District Attorney, Fifth Judicial District, County Court
House, Roswell, New Mexico

QUESTION

QUESTION

Are water rights on state and federal leased land subject to the Conservancy District tax authorized by §§ 75-13-19 and 75-13-20, New Mexico Statutes 1953 Annotated?

CONCLUSION

No.

OPINION

ANALYSIS

The Pecos Valley Artesian Conservancy District was created in 1931 pursuant to the provisions of Article 13, §§ 75-13-1 to 75-13-24, New Mexico Statutes 1953 Annotated. Sections 75-13-19 and 75-13-20 provide for the levying of taxes upon the property located within the Conservancy District and such taxes have been levied, assessed and collected since the formation of the District.

On December 31, 1957, the District Court for Chaves County entered an order extending the boundaries of the Pecos Valley Artesian Conservancy District to include all irrigated lands which are within the boundaries of the Roswell Artesian Basin, with an effective date of January 31, 1950. This Order was entered pursuant to the provisions of §§ 75-13-13.1 and 75-13-13.2, New Mexico Statutes 1953 Annotated, which was Chapter 208 of the Session Laws of 1957, and the original statutes provided for the assessment and taxing of all lands within the original boundaries of the District, whereas the extension of the boundaries only covers irrigated lands. The Chaves County assessor has advised the Pecos Valley Artesian Conservancy District that irrigated lands which are leased from the State of New Mexico or the United States Government are not subject to the Conservancy District tax.

The water rights on State or Federal land are appurtenant to said land. The water right is initiated by the Lessee and the license is issued in the name of the Lessee. These water rights may be transferred or moved off the land and used on other lands upon

application of the owner of the license, with the consent of the owner of the land. The State of New Mexico and the Federal Government have previously given their consent for the moving of the water right from the leased land and recognize the water right as an improvement on the land, created by the Lessee.

The question which arises from the above is whether water rights on state or federal leased lands are subject to Conservancy District taxes. We are of the opinion that property of the state of New Mexico and the United States Government is not subject to assessment by the Conservancy District in this case. We concede that a lessee, as indicated previously may transfer a water right or move it off the land and use it on other lands upon application. As we view this matter, however, the Conservancy District tax assessment is levied against the property or land rather than the particular water right. In case of default the Conservancy District's lien would be against the land rather than the water right and it is fundamental that property of the State of New Mexico and the Federal Government is exempt for tax execution.

It is possible that the State of New Mexico could waive its tax immunity and the legislature could appropriate funds for the payment of Conservancy taxes as it has done in some cases. It is our understanding however, that such action has not been taken in regard to these particular lands. It would also be possible for Congress to subject property to assessment by a Conservancy District by a waiving of immunity but, again, we know of no such waiver. Consequently we do not believe that the property of the State of New Mexico or of the Federal Government can be taxed or subjected to the Conservancy District Tax.