Opinion No. 60-209

October 31, 1960

BY: OPINION of HILTON A. DICKSON, JR., Attorney General

TO: Mr. A. E. Hunt Director Department of Finance and Administration P. O. Box 1359 Santa Fe, New Mexico

QUESTION

QUESTIONS

1. Is the Middle Rio Grande Conservancy District subject to §§ 11-2-56, 57-58, N.M.S.A., 1953 Compilation (P.S.)?

2. Is the Middle Rio Grande Conservancy District subject to §§ 4-4-2.1 et seq., 1953 Compilation (P.S.)?

3. Is the levy assessed by the Middle Rio Grande Conservancy District subject to the twenty mill limitation of Article VIII, § 2, New Mexico Constitution?

4. If the answer to question 3 is "no", is such levy subject to a vote in accordance with Article VIII, § 2, New Mexico Constitution?

CONCLUSIONS

1. See analysis.

2. Yes.

3. No.

4. No.

OPINION

*{*623}* **ANALYSIS**

We shall answer your questions in order. In regard to the first question, under the provisions of § 11-2-57, N.M.S.A., 1953 Compilation (P.S.), the Local Government Division of the State Department of Finance and Administration has the power and duty in regard to any "local public body" to examine, hold public hearings on, amend and approve annual budgets for such a local public body. Further, it has the power to approve line-item transfers of budget items, increase budgets, supervise the disbursement of funds, require periodic financial reports, prescribe budget forms and

make rules and regulations relating to such powers. The local public bodies under § 11-2-58 (P.S.), are required to keep all books, records and accounts on forms prescribed by the Division of Local Finance, make all required reports and conform to the rules and regulations adopted by the Local Government Division.

The Middle Rio Grande Conservancy District is unquestionably a "local public body" as defined by § 11-2-56 (P.S.). See also Opinion No. 58-51, dated March 11, 1958, holding that the District is a "local public body" required to furnish reports to the Local Government Division. Therefore, if we were to consider only the statutes just cited, the Middle Rio Grande Conservancy District is subject to such statutes.

However, the District has entered into a contract dated September 24, 1951, as amended, with the United States of America acting through the Bureau of Reclamation of the Department of the Interior. This contract provides for reimbursement of the United States by the District for work performed by the Bureau of Reclamation in (1) the rehabilitation of the District's works, (2) rectification of certain portions of the channel of the Rio Grande, and (3) operation and maintenance of the District's works during rehabilitation. This contract is authorized by § 75-32-1 et seq, entitled "The Conservancy District Reclamation Contract Act." The contract was ruled legal in all particulars pertinent here by the Supreme Court of New Mexico in **Middle Rio Grande Water Users Association v. Middle Rio Grande Conservancy District,** 57 N.M. 287, 258, P. 2d 391.

*{*624}* Under § 75-32-6, all real property in any district contracting in such a manner with the United States is divided into two classes known as Class "A" and Class "B" property. Class "A" property consists of the irrigable lands of the district and is assessed and levied against annually at a uniform rate per acre. Class "B" property is all other real property in the district and is assessed and levied against annually on an ad valorem basis. Under § 75-32-6 (3), property may be reclassified upon resolution of the governing board of the district.

Under § 75-32-7, the governing board of the district, after the execution of the contract, determines and establishes an apportionment of the annual assessments to be made against Class "A" and Class "B" property. Such apportionment is subject to the approval of the Secretary of the Interior and the approval and confirmation of the Conservancy Court. Such apportionment may be modified not more frequently than once every five years after approval by the Secretary of the Interior and Conservancy Court in the same manner as the original apportionment.

Under § 75-32-8, annual assessments are made by the governing board of the district, which assessments are to be paid in connection with the following expenses of the district: (1) the payment of the interest upon the bonds of the district and any installment on principal thereof; (2) any payment to become due under the repayment contract with the United States; (3) the portion of the expense of operation and maintenance on the district's works to be collected by assessment and levy; (4) current and miscellaneous expenses other than those specified above and including necessary expenses of

maintaining the organization of the district. The section further provides for the board to sit as a Board of Equalization affording all persons the right to protest the assessments and makes provisions for an appeal of such assessments to the Conservancy Court.

The Conservancy Court is defined under § 75-28-3 (7) as the District Court of that Judicial District of the State wherein the Conservancy District was organized. Under § 75-28-4, the Conservancy Court is generally invested with jurisdiction to establish conservancy districts and is granted original and exclusive jurisdiction coexstensive with the boundaries of the Conservancy District to enforce the Conservancy Act.

Under the repayment contract with the United States, the District, in consideration for the construction, operation and maintenance work performed by the Bureau of Reclamation, pays to the United States the following charges in the order stated: (1) the cost of operating and maintaining the project work during construction less reasonably necessary costs of administration of the affairs of the district; (2) principal and interest on all bonds of the district not held by the United States (3) reimbursement construction charges.

Thus, it can clearly be seen that the assessments of the Middle Rio Grande Conservancy District are paid in accordance with § 75-32-1 et seq., except for administrative expenses, to the United States of America in form of payments under the repayment contract. The contract was entered into before the passage of §§ 11-2-56 through 58, and, therefore, such contract cannot be impaired by the passage of such statutes.

We conclude that since the disposition of the assessments, except for administrative expenses, is governed solely by this contract, the Local Government Division of the Department of Finance and Administration would have no authority to exercise its jurisdiction over the approval of any budget of the District based upon these assessments and it would be futile and surplusage for the District *{*625}* to submit any such a budget to the Local Government Division. However, it is our opinion that the Local Government Division can require budget approval of the administrative budget of the Conservancy District since these moneys are to be spent by the District for its own purposes and are not paid to the United States under the contract.

We turn now to your second question, that is, whether the Middle Rio Grande Conservancy District is subject to the provisions of § 4-4-2.3, N.M.S.A., 1953 Compilation, requiring annual audits by the State Auditor, personnel of his office, or independent auditors approved by him. There has been some doubt on this matter because of the provisions of §§ 75-28-47 and 75-30-27. This last mentioned section provides that the Conservancy Court.

". . . shall order the auditing of said accounts by competent public accountants, who file their reports thereon with the clerk, which audit shall be in lieu of and fulfill all purposes of any audit now required by law for any similar political subdivision of the state."

It has been contended that this audit ordered by the Conservancy Court continues to be in lieu of that required by § 4-4-2.3, supra.

In response to this question, we feel it necessary to only refer to § 4-4-2.1 and 2.3, supra. It will be noted that the first mentioned section defines a local public body as being "every political subdivision of the State of New Mexico which expends public money from whatever source derived, including but not limited to * * * conservancy * * districts."

Section 4-4-2.2 provides that the financial affairs of every State agency and every public body shall be audited annually and § 4-4-2.3 provides that such audits shall be conducted by the State Auditor, personnel of his office designated by him, or by independent auditors approved by the State Auditor. It should also be noted that § 4-4-2.5 provides that the cost of such audits shall be borne by the local public body whose affairs are audited.

When it is noted that this act was adopted by the Legislature in 1957, which is much later than the adoption of either of the sections which have caused the problem here under consideration, it must be our opinion that the Legislature intended modification of the previous existing laws.

We believe it unnecessary to decide whether the provisions of § 75-30-27, requiring an audit upon order of the Conservancy Court have been repealed although it is our view that they probably have not since there is no inconsistency in requiring duplicate audits, although the desirability of such duplication is not obvious. However, to hold otherwise than that the State Auditor was not obligated to conduct audits of the affairs of the Middle Rio Grande Conservancy District under his supervision would be to delete a portion of the responsibility placed upon him by the State law. Such an amendment of his function is not permissible nor within the purview of the assignment of this office. Therefore, our conclusion to your second question is that the State Auditor has the responsibility and duty to conduct an audit of the affairs of the Middle Rio Grande Conservancy District as provided in § 4-4-2.3.

Your third question requires consideration as to whether the assessments made by the Middle Rio Grande Conservancy District is subject to the 20-mill limitation of Article VIII, Section 2 of the New Mexico Constitution. That Section reads as follows:

"Taxes levied upon real or personal property for state revenue shall not exceed four mills annually on each dollar of the assessed valuation thereof except for the support of the educational, penal and *{*626}* charitable institutions of the state, payment of the state debt and interest thereon; and the total annual tax levy upon such property for all state purposes exclusive of necessary levies for the state debt shall not exceed ten mills; **Provided, however, that taxes levied upon real or personal tangible property for all purposes, except special levies on specific classes of property and except necessary levies for public debt, shall not exceed twenty mills annually on each dollar of the assessed valuation thereof, but laws may be passed authorizing**

additional taxes to be levied outside of such limitation when approved by at least a majority of the electors of the taxing district voting on such proposition." (Emphasis supplied)

Your attention is directed to the underscored portion of section 2. You will note that an exception to the 20-mill limitation provided for therein is made of special levies on specific classes of property. It is our opinion that the assessments of the Middle Rio Grande Conservancy District fall within this exception. The whole concept of the assessments by that District upon the property owners within the District is dependent upon a theory of benefits accruing to the property owners because of the operations of the District. See Article 29, Chapter 75, N.M.S.A., 1953 Compilation. The property owners taxed are in the category or have a specific classification separate and apart from other property owners in that they are within the boundaries of the District as determined through appropriate action before the Conservancy Court and derive the benefits accruing therefrom. For this reason, we believe that the assessments levied by it at the instant time through the provisions of Section 75-32-8 are not within the purview of the limitations imposed by Article VIII, Section 2 of the Constitution, and thus, are not subject to the 20-mill limitation. This conclusion is borne out by the decisions of our Supreme Court in the cases of **Gutierrez v. Middle Rio Grande Conservancy District,** 34 N.M. 346, 282 Pac. 1, 70 A.L.R. 1261, and **Hamilton v. Arch Hurley Conservancy District,** 42 N.M. 86, 75 P. 2d 707.

Your fourth question is whether a levy in excess of the 20-mill limitation must be approved by at least a majority of the electors of the taxing district voting on such proposition. Our answer is in the negative. First of all, it must be noted that Article VIII, Section 2, supra, providing for such voting, provides that laws may be passed authorizing additional taxes outside of such limitation upon such approval. We find no laws of such nature relating to conservancy districts. Secondly, and most importantly, we are of the opinion that the exception defined in response to your third question is equally applicable here and laws of the nature described in Section 2 are unnecessary. This is to say that such laws are not required when the taxes or assessment levies are special levies on special classes of property and it is our determination that this exception is applicable here.

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