

Opinion No. 61-87

September 15, 1961

BY: OPINION OF EARL E. HARTLEY, Attorney General Oliver E. Payne, Assistant Attorney General

TO: Mr. W. Williams, Jr., Chairman, State Soil Conservation Committee, Rt. 4, Box 36, Santa Fe, New Mexico

QUESTION

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May Federal, Indian reservations and State Lands be included in watershed districts?

CONCLUSION

See analysis.

OPINION

ANALYSIS

The Watershed District Act (45-5-19 through 45-5-41, N.M.S.A., 1953 Compilation, (P.S.)) was enacted for the purpose of securing "the federal assistance provided in Public Law 566 of the 83rd Congress, and amendatory legislation, for New Mexico in its program to further the conservation, development, utilization, flood prevention and disposal of water, and thereby preserve and protect New Mexico's land and water resources." Section 45-5-21, N.M.S.A., 1953 Compilation (P.S.).

The Act provides that "the land area embraced in districts must be contiguous and must lie within a well-defined watershed area or subwatershed areas. The districts may embrace lands lying in one or more soil conservation districts, or lands lying partly within and partly outside a soil conservation district. Section 45-5-23, N.M.S.A., 1953 Compilation (P.S.).

Subsequent sections set forth the election procedure for establishing a watershed district and the authority of the board of directors. Nowhere in the Act is there any indication of whether or not the legislature contemplated that Federal, Indian reservation and State lands would be included in such a district.

Without getting into any discussion of Federal-State jurisdiction, which we do not propose to do, we are of the opinion that Federal, Indian reservation and State lands may be included in a watershed district only if the officials charged with administering such lands specifically agree to the inclusion of the lands in the district. And even if such

agreement is obtained, there is yet another agreement that is a prerequisite to such inclusion.

Section 45-5-34, N.M.S.A., 1953 Compilation (P.S.), provides that the district's board of directors "shall by order or resolution, levy an assessment sufficient to meet such budget, not to exceed five mills per dollar of the assessed value of **all real property within the district, * * ***". (Emphasis added).

Under the New Mexico Constitution, Federal, State and Indian reservation property is exempt from taxation (Art. VIII, Section 3 and Art. XXI, Section 2), and while special assessments for benefits do not fall within this constitutional tax inhibition, still there must be express statutory authority for such assessment. **Lake Arthur Drainage Dist. v. Field**, 27 N.M. 183, 199 P. 112; **Lake Arthur Drainage Dist. v. Board of Commissioners of Chaves County**, 29 N.M. 219, 22 P. 383. Attorney General Opn. 59-161. There is no such statutory authorization in the Watershed District Act.

In view of the above, it would be necessary that the officials administering the lands in question also agree to put up a pro rata share of the district's budget, based on the value of the lands included in the district -- this because the assessment is to be uniform throughout the district. Attorney General Opinion No. 57-116. This amount may be difficult of computation, since in most counties property exempt from taxation is not carried on the tax rolls. And the value of the real property as indicated on the tax rolls is a determining factor in computing the assessment. Section 45-5-35, N.M.S.A., 1953 Compilation, (P.S.).

If such administrative hurdles can be cleared. Federal, Indian reservation and State land may be included in a watershed district.