

Opinion No. 62-51

March 27, 1962

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

TO: Mr. Julius C. Sanchez, Assistant District Attorney, Seventh Judicial District, Socorro, New Mexico

QUESTION

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Is a person who has paid Middle Rio Grande Conservancy District assessments upon his property but who has not paid ad valorem taxes on property located within the municipality eligible to vote at the city bond election for flood protection?

CONCLUSION

No.

OPINION

ANALYSIS

The controlling constitutional provision for purposes of answering your inquiry is Article IX, Section 12, of the New Mexico Constitution, which provides as follows:

"No city, town or village shall contract any debt except by an ordinance, which shall be irrevocable until the indebtedness therein provided for shall have been fully paid or discharged, and which shall specify the purposes to which the funds to be raised shall be applied, and which shall provide for the levy of a tax, not exceeding twelve mills on the dollar upon all taxable property within such city, town or village, sufficient to pay the interest on, and to extinguish the principal of, such debt within fifty years. The proceeds of such tax shall be applied only to the payment of such interest and principal. No such debt shall be created unless the question of incurring the same shall, at a regular election for councilmen, aldermen or other officers of such city town or village, have been submitted to a vote of such qualified electors thereof **as have paid a property tax therein during the preceding year**, and a majority of those voting on the question, by ballot deposited in a separate ballot box, shall have voted in favor of creating such debt." (Emphasis added).

There is no question but that the property tax referred to in the underlined portion of the above-quoted constitutional provision is the ad valorem tax dealt with by Article VIII, Section 1, New Mexico Constitution.

While generally considered to be based upon the taxing power, a special assessment is not a tax at all in the constitutional sense. 14 McQuillen, Municipal Corporations, Section 38.01 (1950); **Roswell v. Bateman**, 20 N.M. 77, 146 Pac. 950. A special assessment, as distinguished from a property tax, is a special levy against certain property based upon the premise that due to a public improvement of some nature, such property has received a benefit which is commensurate with the burden. **Altman v. Kilburn**, 45 N.M. 453, 116 P.2d 812. See, e.g., Section 75-30-31, N.M.S.A., 1953 Compilation.

Property taxes, on the other hand, have no relation to a specific benefit but are imposed generally on all non-exempt property in the taxing district for the purpose of raising revenue for governmental operations. **State v. Carney**, 166 Ohio St. 81, 139 N.E. 2d 339; **New York Central R. Co., v. Town of Glasgow**, 142 W. Va. 291, 95 S.E. 2d 420; **Vail v. Custer County**, 132 Mont. 205, 315 P.2d 993; **Ranney v. City of Cape Girardeau**, 255 Mo. 514, 164 S.W. 582.

In a number of cases involving irrigation assessments, our own Supreme Court has distinguished assessments from taxes. **Altman v. Kilburn**, 45 N.M. 453, 116 P.2d 812; **In re Proposed Middle Rio Grande Conservancy District**, 31 N.M. 200, 242 Pac. 688; **Gutierrez v. Middle Rio Grande Conservancy District**, 34 N.M. 346, 282 Pac. 1.

In holding special assessments for improvements on state lands not to be a tax in violation of Article VIII, Section 3 of the New Mexico Constitution, the Court had this to say in **Lake Arthur D.D. v. Field**, 27 N.M. 183, 199 Pac. 112:

"Specific assessment on property for improvements, based upon benefits, the cost of which is assessed against the property, is not a tax within the constitutional sense."

In view of the above authorities, it is our conclusion that one who has paid a conservancy district assessment on property located in a municipality, but who has not paid an ad valorem property tax on property within the municipality during the preceding year, is not eligible to vote in a city bond election.