

Opinion No. 63-19

March 12, 1963

BY: OPINION of EARL E. HARTLEY, Attorney General

TO: Miss Hazel Gardner Administrative Assistant New Mexico Commission on Alcoholism Santa Fe, New Mexico

QUESTION

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1. May the Middle Rio Grande Conservancy District levy an assessment against realty of the New Mexico Commission on Alcoholism situated within the boundaries of the conservancy district?
2. What are the proper procedures involved in the payment of the assessment?

CONCLUSIONS

1. Yes, providing the property is benefited by the assessment.
2. See Analysis.

OPINION

{*40} ANALYSIS

The original laws relating to the establishment, development and financial administration of conservancy districts are contained in Laws 1927, Chapter 45, Sections 101 to 528. They are entitled the "Conservancy Act of New Mexico" and are compiled in §§ 75-28-1 to 75-30-28, New Mexico Statutes Annotated, 1953 Compilation.

A reading of the entire act disclosed that the legislature intended to assess all real property, both public and private, embraced within a conservancy district, {*41} including the property held by "Public Corporations" and which was benefited by any of the particular kinds of assessments authorized and levied thereon. See Sections **75-28-3 (1) (2) (3) (4)**, 75-28-45, 75-29-1 (1), 75-29-2 (3), 75-29-12 (5), **75-30-2 (1)**, **75-30-3 (2)**, **75-30-4 (1) (2)**, **75-30-5 (1) (2)**, **75-30-9 (1)**. (Emphasis added).

Though the property in question is public and held in the name of the State, it is subject to assessment by the District Authority. An assessment against public property is not a tax in the constitutional sense. And Article VIII, Section 3 of the New Mexico Constitution, which exempts state-owned property from taxation, does not apply. **Lake Arthur Drainage District v. Field**, 27 N.M. 183, 187, 199 Pac. 112 (1921); **Lake**

Arthur Drainage District v. Board of Commissioners of Chaves County, 29 N.M. 219, 221, 222 Pac. 383 (1923) 90 A.L.R. 1137, 1139.

The above cases were cited in AG Opinion 59-161, and the constitutional exemption (supra) was held inapplicable as to a paving assessment. However in that Opinion it was **erroneously** concluded "that specific authority must be found in the statutes before special assessments can be made against state property." To that extent the above opinion is **overruled**, for our Supreme Court has held directly to the contrary in **Lake Arthur Drainage District v. Board of Commissioners of Chaves County**, supra.

In the **Chaves County** case, supra, the Lake Arthur Drainage District brought mandamus against the Chaves County Board of Commissioners to enforce payment of an assessment levied against the county under the Drainage Act for benefits to public highways. The Board of Commissioners refused to pay and argued that such assessment was not authorized since "counties" were not specifically included under the Drainage Act as being liable for assessment. The Court in disposing of this contention said:

"Generally speaking, we should say that liability for such assessments would be the rule and exemption the exception, and if the county had been intended by the Legislature to be exempt from assessments, the exemption would have been stated and not left to implication. Furthermore, the fact that the makers of the Constitution, in specifically providing that property of a county should be exempt from general taxation, without providing an exemption from special assessments, would compel the contrary implication that no such exemption was intended; and, furthermore, if public property is to be exempted from taxation by implication, then Section 3 of article 8 of the Constitution, by which such property is specifically exempted from general taxation is meaningless and useless. The very fact that the Constitution declares an exemption from general taxation in favor of public property is a recognition of the principle that, without such express exemption, such property would be subject to taxation along with private property.

If it was necessary to make an express exemption in favor of public property from general taxation, surely was it necessary that there should be an express exemption if such property is to be free from special assessments for benefits."
(Emphasis added)

The Conservancy Act does not specifically exempt the Commission on Alcoholism from assessment. It is true that the Commission is not specifically included, but such express statutory ^{*42} consent to bind the State to a valid assessment is unnecessary under New Mexico law, as expressed in the **Chaves County** decision, supra. The legislative intent required to include the Commission as a valid subject for assessment is sufficiently expressed within the terms of the Act (as previously observed) and by the specific failure to exempt the Commission from assessment.

Therefore, in view of the cases and principles of law set out above, we hold that the Commission on Alcoholism is bound by the Middle Rio Grande Conservancy District assessment for the benefits received.

2. The real property declaration form, which the Commission has received, lists the base value of the property upon which the assessment is computed. If the valuation of the property is incorrect, a proper adjustment should be made in cooperation with the Bernalillo County Assessors Office before the Commission pays the assessment levied thereon. Otherwise, the assessment, as prescribed on the Tax Notice, should be paid to the Treasurer of Bernalillo County.

By: George Richard Schmitt

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