

## Opinion No. 64-90

July 10, 1964

**BY:** OPINION OF EARL E. HARTLEY, Attorney General George Richard Schmitt,  
Assistant Attorney General

**TO:** Mr. Ray Kersting, Local Government Division, Department of Finance &  
Administration, Santa Fe, New Mexico

### QUESTION

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Does a tax which is levied by the Albuquerque Metropolitan Arroyo Flood Control Authority pursuant to the provisions of the Arroyo Flood Control Act, fall within the "20 mill limitation" imposed by Article VIII, Section 2 of the New Mexico Constitution?

#### CONCLUSION

No.

### OPINION

#### ANALYSIS

The tax referred to in the question above is set forth in Section 75-36-22 of the Arroyo Flood Control Act (Sections 75-36-1 to 75-36-103, N.M.S.A., 1953 Compilation, (P.S.)). The tax "is 1/2 of one mill" which the Authority is empowered to levy upon all taxable property located within its boundaries, (as specifically defined in Section 75-36-6, supra) for the purpose of operating and maintaining a flood control project.

The state constitutional provision referred to above, Article VIII, Section 2 thereof provides in pertinent part as follows:

". . . 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 . . ."

Our State Supreme Court has had occasion in the past to interpret this section of the Constitution. In the case of **Hamilton v. Arch Hurley Conservancy District, et al**, 42 N.M. 86, 92, 75 P2d 707 (1938), a question, very similar to the one we have here was before the Court. In this case, the plaintiff was a landowner in the Conservancy District and assailed the validity of a 6 mill tax levied on all the property within the district for the purpose of paying the expenses of the organization. The plaintiff, Hamilton, contended

that the tax was invalid because its imposition would bring the total levy applicable to property within the district in excess of the 20 mill limit fixed by Article VIII, Section 2 of the Constitution. The court decided this tax was not the kind contemplated by the Constitution and held that the constitutional limitation on taxes applied only

"to taxes in the proper sense of the word, levied with the object of raising revenue for general purposes . . ." The provision does not extend "to local assessments for improvements levied upon property specially benefited thereby. See also, *State ex rel Capitol Addition Bldg. Commission v. Connelly*, 39 N.M. 312, 46 P2d 1087, 1101."

In view of the decision in the Hamilton case, *supra*, it is our opinion that the "1/2 of one mill" property tax which the Albuquerque Flood Control Authority may levy pursuant to Section 75-36-22 (J) *supra*, is not a general tax. It is a benefit assessment and not subject to the 20 mill limitation of Article VIII, Section 2, New Mexico State Constitution as we believe the following examination of the law will clearly show.

Because of woefully inadequate flood preventative measures existing in the metropolitan center of Albuquerque resulting in the occurrence of severe floods in that area, our Legislature in 1963 enacted the Arroyo Flood Control Act, *supra*. A long sought after flood control system was thereby created to be managed, operated and governed by the Albuquerque Metropolitan Arroyo Flood Control Authority, Sections 75-36-5, 75-36-8 and 75-36-19, *supra*.

In the enactment of the law the legislature stated that because of "a typical" and "special condition" a "general law" could not be made applicable to this flood control system, Section 75-36-2(F). And in the creation of the Albuquerque Flood Control Authority, the legislature expressly declared that it would be of "special benefit to the property included within . . ." and that for the purposes of promoting "the health, safety, prosperity, security and general welfare of the inhabitants thereof and of the State of New Mexico . . ." the provision of the law governing the authority shall be broadly construed" Section 75-36-2, *supra*.

As is readily apparent from this summary of expression of legislative intent set out above, there is no question that the Arroyo Flood Control Act was designed to directly benefit only the land included within the Albuquerque Flood Control Authority. Therefore, the legislature could not have intended the tax authorized under the law to be a general tax, to be levied for general or state revenue purposes. This tax is in reality an assessment because it is levied solely for the purpose of operating the flood control system which enhances the value of, protects, improves and otherwise specially benefits only that portion of land included within the Albuquerque Flood Control Authority. Being in the nature of a benefit assessment it does not fall within the 20 mill limitation in Article VIII, Section 2 of the State Constitution.