Opinion No. 65-182

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BY: OPINION OF BOSTON E. WITT, Attorney General Oliver E. Payne, Deputy Attorney General

TO: Alexander F. Sceresse, District Attorney, Second Judicial District, County Court House, Albuquerque, New Mexico

QUESTION

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1. May the Albuquerque Metropolitan Arroyo Flood Control Authority levy an assessment for flood control purposes?

2. May the Corrales Watershed District, located within the territorial limits of the Albuquerque Metropolitan Arroyo Flood Control Authority areas, levy an assessment for flood control purposes?

3. Which of these entities has the priority to levy the assessment for flood control construction in the area of the Corrales Watershed District?

4. Would it be a double assessment if the Albuquerque Metropolitan Arroyo Flood Control Authority levies an assessment for flood control and the Corrales Watershed District also levies an assessment on the same property for the same general purpose, i.e., construction of flood control dams?

5. If the Albuquerque Metropolitan Arroyo Flood Control Authority has already levied an assessment on the property within the Corrales Watershed District, must the Authority turn the money received from Corrales property owners over to the Watershed District for flood control work?

CONCLUSIONS

1. Yes.

2. Yes.

3. Neither has priority.

4. No.

5. No.

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*{*299}* ANALYSIS

Section 75-36-22, N.M.S.A., Compilation (P.S.), a portion of the Arroyo Flood Control Act of 1963, provides in paragraph J that the Authority may:

"Levy and cause to be collected general (ad valorem) taxes on all taxable property within the authority; Provided, that the total tax levy for any fiscal year shall not exceed an aggregate total of one half of one mill. . . ."

While this provision denominates the levy a "tax", it actually is not. It is a special assessment which, according to express legislative declaration in Section 75-36-2, N.M.S.A., 1953 Compilation (P.S.), "will be of special benefit to the property within the boundaries of the authority." Special assessments for benefits are not taxes in the constitutional sense. **Dexter-Greenfield Drainage District,** 21 N.M. 286, 154 Pac. 382; **Lake Arthur Drainage District v. Field,** 27 N.M. 183, 199 Pac. 112; **Hamilton v. Arch Hurley Conservancy District,** 42 N.M. 86, 75 *{*300}* P.2d 707.

Boards of Directors of Watershed Districts have the power, subject to approval of the board of supervisors, to:

"Levy an annual assessment on the real property within the district within the limitations provided in section 45-5-34, New Mexico Statutes Annotated, 1953 Compilation, for administration, construction, operation and maintenance of works of improvement within and without the district as are required by the district in the performance of its functions. . . ."

This statute (Section 45-5-31) is also a special assessment for benefits and further provides that "Any levy authorized by this section shall be levied only on agricultural lands in the district unless after a separate hearing for each owner of non-agricultural land, held only after written notice to the landowner at least ten days prior to the hearing, **the board shows** that the non-agricultural land, or any part of it which is involved in the hearing, will benefit from the project for which the levy is to be made." See Opinion 63-78.

Thus we see that each of the two entities discussed, i.e., the Corrales Watershed District and the Albuquerque Metropolitan Arroyo Flood Control Authority, are authorized to levy an assessment for flood control purposes. Neither has priority over the other. Each may make the **necessary** assessment. Incidentally it is not unusual for the legislature to provide authorization for two or more levies of assessment on the same property for purposes that are at least similar in nature. For example, in one area there might be a levy for a vocational Institute and a Junior College, as well as the school district levy.

In this jurisdiction "double taxation" is not constitutionally objectionable "if the taxes are equal and uniform upon subjects of the same class." **Storrie Project Water Users Association v. Gonzales,** 53 N.M. 421, 209 P. 2d 530; **Amarillo-Pecos Valley Truck Lies v. Gallegos,** 44 N.M. 120, 99 P. 2d 447; **State v. Tittmann,** 42 N.M. 76, 75 P. 2d 701.

In any event in the situation we have here -- assuming both entities levy an assessment -- there is no double taxation or double assessment. In **Aragon v. Empire Gold Mining & Milling Co.,** 47 N.M. 299, 142 P. 2d 539 our Supreme Court said:

"'Double taxation' is the imposition of the same tax, by the same taxing power, upon the same subject matter. We think this definition is applicable also to 'double assessment'".

Here the two levies of assessment are not the same, they are not levied by the same authority and, in many cases, they are not upon the same subject matter -- the latter because the Watershed District levy is basically levied on agricultural land while the Authority's levy is on all taxable property within the area of the Authority. Hence there is no double assessment.

Basically, the above paragraph answers your final question. Each entity is to use its assessments for the purpose stated in the Act governing it to provide benefits to those upon whom the levy of assessment is made. Thus the answer to your last question is in the negative.