

Opinion No. 66-60

May 12, 1966

BY: OPINION OF BOSTON E. WITT, Attorney General Paul J. Lacy, Assistant Attorney General

TO: Victor C. Breen, District Attorney, County Court House, Tucumcari, New Mexico

QUESTION

FACTS

The Arch Hurley Conservancy District, hereinafter referred to as the District, was organized by authority of the "Conservancy Act," compiled as Sections 75-28-1 through 75-31-24, N.M.S.A., 1953 Compilation. The District is now operating pursuant to the authority granted by "The Conservancy District Reclamation Contract Act," §§ 75-32-1 through 75-32-43, N.M.S.A., 1953 Compilation. The latter act gives the District power to issue bonds or to enter into contracts for the purpose of borrowing money from the United States for reclamation purposes, § 75-32-2, *supra*.

The latter act provides for repayment of the indebtedness by the assessment and levying of taxes upon the lands in the District, § 75-32-8, N.M.S.A., 1953 Compilation (P.S.). These taxes fall into two classes, the first being a pro rata tax on each acre of irrigable land in the District, and this land is denominated as "class A" property, § 75-32-6, *supra*. All other real property in the District is denominated "class B" property and is subject to an ad valorem tax, § 75-32-6, *supra*. The act provides that the treasurer of the District is to collect all taxes on "class A" property, while the county treasurer is charged with the collection of the ad valorem tax on "Class B" property in the District, § 75-32-9 (2), *supra*.

The Conservancy Act, *supra*, under which the District was created provided a different method of taxing the property within the District. However, for purposes of this opinion, it is important to note only that those taxes were wholly collected by the county treasurer of each county wherein District lands lay, § 75-30-14, *supra*. That act also provided that the District was to pay salaries for any extra clerical force needed by the various county treasurers in order to collect the taxes for the District. § 75-30-28, *supra*.

QUESTION

Does Section 75-30-28, *supra*, apply to a District created pursuant to the Conservancy Act, *supra*, and operating under the power granted by the Conservancy District Reclamation Contract Act, *supra*, thereby requiring the District to compensate the various county treasurers for the burden imposed by the collection of the ad valorem taxes on "class B" property within the District?

CONCLUSION

No.

OPINION

{*73} ANALYSIS

All New Mexico Conservancy Districts must be formed under the authority of the Conservancy Act, supra, regardless of whether they are operating under that Act or the Conservancy District Reclamation Contract Act, § 75-32-1 (c), supra. However, it is of great importance for this opinion to point out that while the purposes of the two acts are akin, and even though there is a good deal of interrelation between these acts, we are of the opinion that the methods of assessing and levying taxes are totally distinct. The following language from Section 75-32-5, supra, supports this view:

When certain provisions to apply -- General obligation. -- (1) **Except as otherwise herein provided, the provisions of the Conservancy Act relating to the appraisal and confirmation of benefits and assessments and levy pursuant thereto shall not apply to a contracting district.**

(2) The provisions of the Conservancy Act relating to the appraisal and confirmation of benefits and assessments and levy pursuant thereto shall, with respect to assessments and levies for works to be constructed pursuant to reclamation contracts, apply as to any contracting district which, after the passage of this act, shall have executed a reclamation contract wherein it is expressly so provided and in that event the provisions of this act relating to classification of district real property, the apportionment of assessments, and the assessment and levy pursuant thereto shall be applicable only to the extent expressly provided for in said reclamation contract.

{*74} Notwithstanding the provisions of any other act and whether the revenue necessary to meet payments to the United States under a reclamation contract are to be raised under the provisions of sections six, seven, eight and nine [75-32-6 to 75-32-9] of this act or under the provisions of the Conservancy Act relating to appraisal, confirmation, assessment of benefits and levy thereon, the indebtedness to the United States under a reclamation contract shall constitute a general obligation of the contracting district and of all the real property therein for the payment of which the district and all the real property therein shall be and remain liable until full payment thereof is made, notwithstanding default in payment by individual property-owners. (Emphasis supplied.)

The Arch Hurley Conservancy District, according to the facts supplied this office, is not operating under Section 75-32-5 (2), supra. Its assessments are being made only pursuant to the assessment and levy provisions of the Conservancy District Reclamation Contract Act.

Section 75-30-28, supra, provides, in pertinent part, as follows:

"(3) Before any duties devolve upon the county treasurers **under this act**, the board shall consult them and agree upon the salaries for the extra clerical force, if any, required in their respective offices to carry out the requirements of the law by reason of the establishment of a said clerk or clerks while engaged on the work of the district, which for their respective offices. In case of disagreement as to the compensation of such extra clerical force, the matter shall be referred to the court for its determination." (Emphasis supplied.)

The underscored language "under this act" leads us to the conclusion that the above section is not applicable to the Arch Hurley Conservancy District in this instance. To determine the meaning of the term "this act" in this instance reference should be made to legislative history. Then it becomes apparent that "this act" refers to Laws 1927, Chapter 45 which is the "Conservancy Act of New Mexico" which does not include the provisions of § 75-32-1, et seq., N.M.S.A., 1953 Compilation, enacted as the Laws 1939, Chapter 148 which is known as the "Conservancy District-Reclamation Contract Act." This conclusion is further borne out by the fact in Section 75-32-1, N.M.S.A., 1953 Compilation, reference is made to the "Conservancy Act" distinguishing it from the Conservancy District-Reclamation Contract Act.

A cautionary word should be added here. The mere fact a district has entered into operations pursuant to a contract authorized under the Conservancy District Reclamation Act does not necessarily lead to the conclusion that Section 75-30-28, supra, is inapplicable. Under Section 75-32-5 (2), N.M.S.A., 1953 Compilation, it is possible that this provision could be incorporated in a contract and thereby make it applicable. In this instance, however, it is our information that this has not or was not done.