Opinion No. 67-90

July 14, 1967

BY: OPINION OF BOSTON E. WITT, Attorney General

TO: Mr. John Humphrey, Jr. Assistant District Attorney Tenth Judicial District Fort Sumner New Mexico 88119

QUESTION

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1. Is the Fort Sumner Irrigation District a political subdivision within the meaning of Section 59-3-21 D (3) of the Minimum Wage Act?

2. Are individuals employed by the Fort Sumner Irrigation District individuals "employed in agriculture" within the meaning of Section 59-3-21 D (10) of the Minimum Wage Act?

CONCLUSIONS

1. See analysis.

2. See analysis.

OPINION

*{*129}* **ANALYSIS**

Section 59-3-21 D (3), N.M.S.A., 1953 Compilation, as amended by Chapter 188, Laws of 1967, exempts employees "employed by the United States or by the state or any political subdivision thereof" from our state Minimum Wage Act. Subsection D (10) of Section 59-3-21, supra, exempts certain individuals employed in agriculture from the Minimum Wage Act. We are, therefore, asked if irrigation districts are exempt from our state Minimum Wage Act. To answer this question we must look to the status of irrigation districts.

The first decision relevant here is **Davy v. McNeill,** 31 N.M. 7, *{*130}* 240 Pac. 482 (1925). In **Davy v. McNeill** our Supreme Court held that irrigation districts are not municipal corporations, but only public corporations for municipal purposes. Subsequently, our Supreme Court has classified irrigation districts as quasi-municipal corporations, a term that means the same thing as "public corporations for municipal purposes". See **Stahmann v. Elephant Butte Irrigation District,** 61 N.M. 68, 76, 294 P.2d 636 (1956); **Daniels v. Watson,** 75 N.M. 661, 666, 410 P.2d 193 (1966) and 1 **McQuillan on Municipal Corporations** § 2.13, p. 466, 467 (3rd.Ed., 1949). Before defining the legal status of quasi-municipal corporations or public corporations for

municipal purposes, two 1957 Attorney General's opinions and one other Supreme Court decision must be discussed.

In Attorney General Opinion No. 57-55, issued March 21, 1957, this office concluded that, for purposes of the Old Age and Survivors Insurance Program, the Elephant Butte Irrigation District was a political subdivision. Then, in Opinion No. 57-225, issued September 10, 1957, this office was asked two questions as follows:

"1. Is the Elephant Butte Irrigation District a political subdivision of the State of New Mexico?

2. Can an incorporated village in the State of New Mexico own an undivided interest in a natural gas transmission line which extends beyond five miles from its corporate limits?"

In 1957, Section 14-39-32, N.M.S.A., 1953 Compilation, allowed a municipality to extend its natural gas lines more than five miles from its corporate limits when the sale was to the United States Government, the State of New Mexico, or any department or agency of such governments. Evidently, the Village of Hatch wanted to serve the Elephant Butte Irrigation District with natural gas and the District extended more than five miles from the municipality's corporate limits. This office again concluded that an irrigation district was a political subdivision of this state and further concluded that a municipality could extend its gas transmission lines beyond five miles from its corporate limits if the sale of such gas was to the State of New Mexico, or any department or agency of such governments.

Subsequent to the issuance of Opinion No. 57-225 by this office, a declaratory judgment action was filed to determine the legality of an incorporated municipality, the Village of Hatch, selling natural gas to the Elephant Butte Irrigation District. The New Mexico Supreme Court held that:

"We are of the Opinion and hold the Elephant Butte Irrigation District is not an agency of the State of New Mexico, and that the Village of Hatch may not sell gas to it more than five miles from the village boundary, and it necessarily follows that it also could not sell gas to an improvement district organized under its authority." **Hooker v. Village of Hatch,** 66 N.M. 184, 344 P.2d 699 (1959).

Again, it was stated that irrigation districts are public corporations organized for municipal purposes. The only question remaining is whether a quasi-municipal corporation or a public corporation organized for municipal purposes may also be a political subdivision.

In **City of Albuquerque v. Campbell,** 68 N.M. 75, 351 P.2d 698 (1960), the Supreme Court held that municipalities are subdivisions of the state and are included within the broader term "state". It has already been seen that our Supreme Court has not seen fit to include irrigation districts within the broad term "state" when considering whether an incorporated municipality could sell natural gas to the district. It is also fairly clear that

irrigation districts are not political subdivisions for purposes of immunity from suit. See **Hooker *{*131}* v. Hatch,** supra, at 189. This, however, does not mean that irrigation districts may not be "political subdivisions" for some purposes.

In **Maricopa County Municipal Water Conservation District No. 1 v. La Prade,** 40 P.2d 94 (Ariz., 1935), the Arizona Supreme Court, after classifying counties, cities, towns and municipalities as belonging to one class of subdivisions of the state, then contrasted irrigation districts as subdivisions of the state which:

". . . belong to that class of organizations, once rare but becoming more and more common, established for the pecuniary profit of the inhabitants of a certain territorial subdivision of the state, but having no political or governmental purposes or functions. In some respects these organizations are municipal in their nature, for they exercise the taxing power, the greatest attribute of sovereignty, and can compel the inclusion of unwilling landholders within their bounds. In other ways they resemble private corporations, for they are liable for the torts of their servants in the same manner and to the same extent, and indeed generally have the same rights and responsibilities. **Probably the best definition we can give then is to say that they are corporations having a public purpose, which may be vested with so much of the attributes of sovereignty as are necessary to carry out that purpose, and which are subject only to such constitutional limitations and responsibilities as are appropriate thereto."** Id. at 100 (Emphasis added.)

It is interesting to note that Arizona subsequently made irrigation districts political subdivisions by constitutional amendment in 1940. See Arizona Const., Art. 13, Sec. 7.

We pointed out above that the New Mexico Supreme Court has referred to irrigation districts as quasi-municipal. McQuillan on Municipal Corporations explains that what is meant by this term is that the legislature has endowed a public agency with such attributes of a municipality as may be necessary in the performance of its limited objectives. **McQuillan on Municipal Corporations,** supra. See also **Tingwall v. King Kill Irr. Dist.,** 129 P.2d 898, 899 (Ida., 1942). We, therefore, must conclude that irrigation districts are political subdivisions of the state in that they have the attributes of a municipality only in those instances where it is necessary for the performance of their limited objectives.

Now we are faced with the decision of whether exemption from our Minimum Wage Act is necessary for the performance of an irrigation district's limited objectives. It has been held in this state that immunity from suit is not necessary to the performance of an irrigation district's limited objective. See **Hooker v. Village of Hatch,** supra. It has further been held that irrigation districts are not municipal corporations for purposes of tax exemption on property. **Davy v. McNeill,** supra, at p. 24. If immunity from suit and exemption from taxation are not necessary to carry out the purposes for which irrigation districts are organized, we must conclude that exemption from paying the minimum wage to employees of the district is not necessary for such a purpose.

Next we must consider whether individuals employed by an irrigation district are "employed in agriculture" within the meaning of Section 59-3-21 D (10), N.M.S.A., 1953 Compilation, as amended by Chapter 188, Laws of 1967. Under subparagraph (a) of this section of our statutes an employer is exempt from the Minimum Wage Act if the employer did not during any calendar quarter during the preceding calendar year use more than five hundred man-days of agricultural labor.

In **Koger v. A. T. Woods, Inc.,** *{*132}* 38 N.M. 241, 31 P.2d 255 (1934) our New Mexico Supreme Court adopted the definition of "agriculture" as defined in 2 Corpus Juris, Section 988 as follows:

"The art or science of cultivating the ground, especially in fields or large quantities, included **the preparation of the soil, the planting of seeds, the raising and harvesting of crops,** and the rearing, feeding, and management of live stock; tillage, husbandry, and farming." Id. at 244. (Emphasis supplied.)

The New Mexico Supreme Court then concluded that one employed to supply water on a farm is as much a part of the process of farming and as incidental thereto as is the ploy which turns the soil. **Ibid.** This decision was subsequently followed in **R & R Drilling Co v. Gardner,** 55 N.M. 118, 227 P.2d 627 (1951). We, therefore, must conclude that under certain situations one employed to supply water to be used for agricultural purposes may be "employed in agriculture" under Section 59-3-21 D (10), supra, and therefore the employer would be exempt from the provisions of the Minimum Wage Act. It is a question of fact whether this would include specific employees of irrigation districts in this state.

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