

Opinion No. 71-56

April 21, 1971

BY: OPINION OF DAVID L. NORVELL, Attorney General

TO: Mr. Richard P. Montoya Chairman Public Service Commission Bataan Memorial Building Santa Fe, New Mexico 87501

QUESTIONS

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Are Water and Sanitation Districts organized pursuant to Sections 75-18-1, **et seq.**, N.M.S.A., 1953 Comp. subject to regulation by the Public Service Commission?

CONCLUSION

Only in the matter of approving rates, tolls and charges by the District.

OPINION

{*79} ANALYSIS

The Public Utility Act was enacted in 1941. Section 68-3-1, N.M.S.A., 1953 Compilation. The Water and Sanitation District Act was enacted two years later. Section 75-18-1, N.M.S.A., 1953 Compilation. The legislature was fully aware of the provisions of the Public Utility Act when the Water and Sanitation District Act was passed, yet only one reference to the Public Service Commission is contained in the latter act. That is the provision in Section 75-18-14(L), **supra**, stating, "The board [board of directors of a water and sanitation district] shall fix such rates, tolls or charges **as approved by the public service commission of New Mexico.**" The legislature simply did not choose to place this type of district under the general jurisdiction of the Public Service Commission.

Water and Sanitation Districts are not required by statute to obtain a certificate of public convenience and necessity as are public utilities under the jurisdiction of the Public Service Commission. Section 68-7-1, **supra**. Water and Sanitation Districts are actually creatures of the District Courts and are established in accordance with a specific statutory procedure. Section 75-18-4, **supra**. When twenty-five percent of the tax-paying electors of the proposed water and sanitation district file a petition with the district court, the court, after notice, must hear the petition and declare the district organized if a majority of the electors have voted in favor of organization of the district at an election held for that purpose. Sections 75-18-4, **et seq.**, **supra**. Such districts become "governmental subdivision(s) of the state and a body corporate with all the powers of a public or quasi-municipal corporation."

These districts have the power to levy ad valorem taxes on real property, Section 75-18-15, **supra**. Public utilities have no such power. A majority of the board of directors of a water and sanitation district may sell or dispose of the system. The Public Utility Act requires Public Service Commission approval for the sale of a public utility system. Sections 68-5-12 and 68-5-13, **supra**. Water and Sanitation Districts may issue bonds to finance their operations. Section 68-5-14(E). A public utility may issue stocks and stock {*80} certificates only with approval of the Public Service Commission. Section 68-5-6, **supra**. If it issues notes or mortgages without authority of the Commission, they are void. **Hogue v. Superior Utilities**, 53 N.M. 452, 210 P.2d 938.

Water and Sanitation Districts simply have not been declared to be subject to the jurisdiction of the Public Service Commission except in the limited area of approving the Board's rates, tolls and charges. Unless and until the legislature grants the power of over-all regulation of such districts to the Public Service Commission, it must limit its regulation over Water and Sanitation Districts to rate matters. See **New Mexico Electric Co. v. New Mexico Public Service Comm'n**, 81 N.M. 683 (1970).

By: Oliver E. Payne

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