

Opinion No. 73-15

February 5, 1973

BY: OPINION OF DAVID L. NORVELL, Attorney General

TO: The Honorable Robert A. Mondragon Lieutenant Governor State Capitol Building
Santa Fe, New Mexico 87501

QUESTIONS

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Is it constitutional for an appointed conservancy district board to levy taxes?

CONCLUSION

Yes, if "taxes" is taken to mean "special assessments according to benefits."

OPINION

{*26} ANALYSIS

The Conservancy Act of New Mexico, in its definition of terms, Section 75-28-3(5), provides:

"Whenever the term 'tax' or 'taxes' is used, and not otherwise specified, with reference to levies for benefits, damages, construction, improvements or maintenance, it shall be taken to mean special taxes or special assessments."

This language was interpreted in **In re Proposed Middle Rio Grande Conservancy District**, 31 N.M. 188, 242 P. 683 (1925), which held that the legislative delegation of powers to make such assessments, based on benefits to the property, did not violate the constitution, even where the board was appointed, rather than elected. We refer you in particular to pages 198-201 of that rather long opinion. It is clear from that opinion, however, that the power to make such assessments is limited to the benefits conferred on the property, and that an unlimited power to levy taxes cannot be so delegated. Even the preliminary fund assessment of not to exceed 6 mills under Section 75-50-2, NMSA, 1953 Comp., has been held to be a legislative determination of benefits. **Hamilton v. Arch Hurley Conservancy District**, 42 N.M. 86, 93, 75 P.2d 707 (1938).

By: Dee C. Blythe

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