Opinion No. 76-33

September 22, 1976

BY: OPINION OF TONEY ANAYA, Attorney General

TO: Honorable David M. Salman, New Mexico State Representative, Box 1307, Las Vegas, New Mexico 87701

QUESTIONS

Facts

On May 29, 1973, the petition for organization of the district was filed with the District Court in Taos County. An election of the taxpaying electors was held, and on January 19, 1974, the court entered an order declaring the district "organized and in all proceedings from this date shall be known as the Taos Ski Valley Water and Sanitation District." In early 1976 the District sought to annex land in the Twining Area to the District, pursuant to the procedures outlined in Section 14-7-17, N.M.S.A., 1953 Comp., by Taos Ski Valley Water and Sanitation District Ordinance No. 2, March 22, 1976. The District filed its ordinance and plat with Taos County Clerk on March 23, 1976.

Questions

1. Has the Taos Ski Valley Water and Sanitation District, File No. 9361, District Court of the Eighth Judicial District, State of New Mexico, been legally formed?

2. Is the district a "governmental subdivision of the state and a body corporate with all the powers of a public or quasi - municipal corporation?"

3. Is the district legally entitled to be on the New Mexico state project priority list and to receive public funds?

4. Was the district's annexation of land in the Twining area legal?

Conclusions

1. Yes.

2. Yes.

3. Yes.

4. No, see analysis.

OPINION

*{*118}* Analysis

1. The requirements for establishing a water and sanitation district in New Mexico are set forth in § 75-18-5 through § 75-18-8, N.M.S.A., 1953 Comp.

Section 75-18-8(H), N.M.S.A., 1953 Comp. governs challenges to the validity of the creation of a water and sanitation district. That section states:

"H. If an order is entered establishing the district, the order is final and no appeal or writ of error shall lie therefrom, and the order shall finally and conclusively establish the regular organization of the district against all persons except the state, in an action in the nature of a writ or quo warranto, commenced by the attorney general within thirty [30] days after the decree declaring the district organized. **The organization of the district shall not be directly or collaterally questioned in any suit, action or proceeding except as herein expressly authorized."** (Emphasis added.)

In **State ex rel. Speer v. District Court of Sierra County,** 79 N.M. 216, 441 P.2d 745 (1968), the New Mexico Supreme Court construed the above provision to foreclose the reopening of a district court decision establishing a district. The Supreme Court said:

". . . How the language could have been made much clearer is difficult to imagine. It says specifically that the order establishing the district is final and not appealable, and finally and conclusively establishes that the district has been regularly organized, subject only to attack by the state through quo warranto during a period of 30 days. No exception is made for claims *{*119}* of fraud. If this were not enough, it adds that with this single exception the organization of the district may not be directly or collaterally brought into question . . ."

Thus, given the facts that the district judge signed the order creating the Taos Ski Valley Water and Sanitation District (Order of January 19, 1974, District Court of the Eighth Judicial District, Taos County) and that no quo warranto action was brought within the period of time specified in § 75-18-8(G), the organization of the Taos Ski Valley Water and Sanitation District is presumed valid, and not subject to attack. Therefore, the answer to your first question must be that the district has been legally formed.

2. Your inquiry as to the status of the district as a governmental subdivision of the state is answered by § 75-18-8(G), N.M.S.A., 1953 Comp. That section provides that "the district shall be a governmental subdivision of the state and a body corporate with all the powers of a public or quasi-municipal corporation."

3. Regulations governing the construction grants program, specifically the state project priority list, are contained in 40 C.F.R. § 35.900 et seq. In order to be on the priority list, an entity must be classified as a municipality, as defined under the federal act and regulations. Section 502(4) of the federal act and 40 C.F.R. § 35.905-14 define the term "municipality" as:

"A city, town, borough, county, parish, **district,** association, or **other public body created by or pursuant to state law, . . . having jurisdiction over disposal of sewage, industrial wastes, or other wastes . . ."** (Emphasis added.)

As indicated in the answer to Question 2 above, a water and sanitation district is a public body of the state created pursuant to state law.

Section 75-18-2, N.M.S.A., 1953 Comp. (1975 P.S.) states that a water and sanitation district may be created for the purpose of:

"B. purchasing, acquiring, establishing or constructing sanitary sewers or a system or systems of sewage disposal, garbage or refuse disposal;"

The term "sewage disposal" includes all construction for the collection, transportation, pumping, treatment, and final disposal of sewage. Section 75-18-3(A), N.M.S.A., 1953 Comp.

Thus, the district is a "municipality" as defined under the federal law and regulations, and, therefore, eligible to be placed on the state project priority list and to receive public funds based on its position on the list. 40 C.F.R. § 35.913.

4. Section 75-18-21, N.M.S.A., 1953 Comp. provides that a water and sanitation district may extend its boundaries upon the filing of a petition by those land owners who wish their land to become part of the district, upon publication and upon a hearing held by the district to determine whether the petitioner's land should be included within the district. The ultimate decision rests with board of directors of the district.

Section 14-7-17, N.M.S.A., 1953 Comp. provides a procedure whereby a municipality may annex land. That section provides that where a petition of the "owners of a *{*120}* majority of the number of acres in the contiguous territory" has been filed, a municipality may, by ordinance, annex the land. Section 14-7-17(B), N.M.S.A., 1953 Comp., provides that the ordinance must be filed, along with a copy of the plat of the land annexed, in the office of the county clerk. Section 14-7-17(C), N.M.S.A., 1953 Comp., provides that challenges to such annexation, may be brought within thirty days after the filing of the ordinance in the county clerk's office. If no challenge is made, "the annexation shall be deemed complete." Such annexation procedures do not apply where "there is a complete lack of authority or jurisdiction." **Your Food Stores, Inc. (NSL) v. Village of Espanola,** 68 N.M. 327, 361 P.2d 950 (1961).

The land in the Twining area was annexed to the District pursuant to the procedures for annexation of land to a municipality outlined in Section 14-7-17, N.M.S.A., 1953 Comp. Taos Ski Valley Water and Sanitation District Ordinance No. 2, March 22, 1976. The District filed its ordinance and plat with the Taos County Clerk on March 23, 1976.

The annexation was improper since the district followed the wrong annexation procedures. A water and sanitation district may only annex territory through the procedures set forth in § 75-18-21, N.M.S.A., 1953 Comp.

Although a water and sanitation district is a "body corporate with all the powers of a public or quasi-municipal corporation" § 75-18-8(G), N.M.S.A., 1953 Comp., it may not annex territory through the provisions in the municipal code. A public or quasi-municipal corporation is not a municipality for the purposes of New Mexico state law.

". . . a public corporation is one that is created for political purposes only, with political powers to be exercised for purposes connected with the public good in the administration of civil government . . ." 1 McQuillen **On Municipal Corporations** (3rd Ed.) § 2.03.

A quasi-municipal corporation is:

". . . a corporation created or authorized by the legislature which is merely a public agency endowed with such of the attributes of a municipality as may be necessary in the performance of its limited objective . . . . Quasi-municipal corporations are public in nature, but not, strictly speaking, municipal corporations." **1 McQuinnen On Municipal Corporations** (3rd Ed.) § 2.13.

Powers of quasi-municipal corporations are derived from the statutes by which they are created. **Bibo v. Town of Cubero Land Grant,** 65 N.M. 103, 332 P. 2d 1020 (1958). See also **Board of Trustees of Town of Las Vegas v. Montano,** 82 N.M. 340, 481 P.2d 702 (Sup. Ct. 1971); **Tri-City Fresh Water Supply Dist. No. 2 v. Mann,** 142 S.W.2d 945 (Sup. Ct. Tex. 1940). A water and sanitation district is not a "municipality" within the meaning of the term as used in the municipal code. Section 14-1-2, N.M.S.A., 1953 Comp.

The language of §§ 75-18-8(G) and 75-18-21, N.M.S.A., 1953 Comp. cannot be construed to allow a water and sanitation district to use provisions of the municipal code. Where the meanings of the statute "are free from ambiguity and doubt and express plainly, clearly and distinctly the sense of the legislature, no other means of interpretation should be restored." *{*121}* **City of Roswell v. New Mexico Water Quality Control Commission,** 84 N.M. 561, 505 P. 2d 1237 (1972), **cert. denied,** 84 N.M. 560, 505 P.2d 1236 (1973). The provisions of § 75-18-21, N.M.S.A., 1953 Comp., which apply specifically to water and sanitation districts, prevail over the more general provisions of § 14-7-17, N.M.S.A., 1953 Comp. **Hopper v. Board of County Commissioners,** 84 N.M. 604, 506 P.2d 348 (Ct. App. 1973), **cert. denied,** 84 N.M. 592, 506 P.2d 336 (Sup. Ct. 1973). Therefore, the annexation by Taos Ski Valley Water and Sanitation District is invalid.