



April 12, 2024

OPINION
OF
RAÚL TORREZ
Attorney General

Opinion No. 2024-06

By: Ellen Venegas
Assistant Solicitor General

To: Senator Jeff Steinborn
New Mexico Senate

Re: Opinion Request – Property Taxation of Mutual Domestic Water Consumers Associations

Question: Is a mutual domestic water consumers association (MDWCA) organized pursuant to the Sanitary Projects Act (SPA), NMSA 1978, §§ 3-29-1 to -21 (1965, as amended through 2013), exempt from valuation for property taxation purposes, either pursuant to NMSA 1978, Section 7-36-28(G) (2009), or a constitutionally authorized exemption from property taxation?

Answer: MDWCAs are exempt from property taxes.

Analysis

In answering a question about the application of property taxes, we are guided by the general principle that “[a]ll tangible property in New Mexico is subject to taxation . . . and should be taxed, unless specifically exempted by the constitution or by its authority.” *Sims v. Vosburg*, 1939-NMSC-026, ¶ 4, 43 N.M. 255, 91 P.2d 434. The New Mexico Constitution exempts the following from property taxation:

[t]he property of the United States, the state and all counties, towns, cities and school districts and other municipal corporations, public libraries, community ditches and all laterals thereof, all church property not used for commercial

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purposes, all property used for educational or charitable purposes, all cemeteries not used or held for private or corporate profit and all bonds of the state of New Mexico, and of the counties, municipalities and districts thereof[.]

N.M. Const. art. VIII, § 3.

Our analysis depends on whether MDWCAs fall within the category of “other municipal corporations” the property of which is exempt under Article VIII, Section 3. Several decades ago, this office analyzed the law in existence at the time and concluded that MDWCAs were not exempt from property taxation. *see* N.M. Att’y Gen., No. 68-38 (Apr. 9, 1968). However, subsequent changes in the law—including significant amendments to the SPA—mandate a different result today. Under current law, MDWCAs are municipal corporations, and the property of MDWCAs is therefore constitutionally exempt from property taxation.

MDWCAs, widespread throughout New Mexico, are community water systems that predominantly serve rural communities. “The purpose, membership, and activities of an [MDWCA] are carefully circumscribed by state law.” *Moongate Water Co. v. Doña Ana Mut. Domestic Water Consumers Ass’n*, 2008-NMCA-143, ¶ 12, 145 N.M. 140, 194 P.3d 755. MDWCAs are created under the SPA, an Act located within the State’s Municipal Code. The express purpose of the SPA

is to improve the public health of rural communities in New Mexico by providing for the establishment and maintenance of a political subdivision of the state that is empowered by the state to receive public funds for acquisition, construction and improvement of water supply, reuse, storm drainage and wastewater facilities in communities, and to operate and maintain such facilities for the public good.

Section 3-29-3; *see also* *Moongate Water Co.*, 2008-NMCA-143, ¶ 15 (“[T]he purpose of the SPA is to improve the public health of the people of New Mexico by establishing sanitary domestic water facilities to supply water to rural unincorporated communities, which otherwise would likely have no means to procure usable water.” (internal quotations and citation omitted)).

“By enacting the SPA, . . . the [L]egislature has provided a governmental solution for a particular problem: water supply in the rural communities in New Mexico.” *Id.* ¶ 12. The SPA enumerates a litany of powers possessed by MDWCAs that clearly give them self-governing authority for the specific purposes for which such MDWCAs exist. *See, e.g.*, §§ 3-29-6 (outlining various powers of MDWCAs, including the ability to impose fees, prescribe and enforce rules, and exercise the power of eminent domain), -15 (providing that MDWCAs “constitute a public body corporate” and “may sue and be sued, have capacity to make contracts, acquire, hold, enjoy, dispose of and convey property real and personal, accept grants and donations, borrow money, incur indebtedness, impose fees and assessments and do any other act or thing necessary or proper for carrying out the purposes of their organization”).

As local political entities created pursuant to statute and authorized to manage community water systems, MDWCAs have “the autonomous authority to administer the state’s local affairs . . . and [are] endowed with political powers to be exercised for the public good in the administration of local civil government.” *Einer v. Rivera*, 2015-NMCA-045, ¶ 24, 346 P.3d 1197 (internal quotation marks and citation omitted) (defining municipal corporation). In total, MDWCAs possess the attributes municipal corporations are commonly understood to have. *See id.* ¶ 26 (describing characteristics of municipal corporations); *Moongate Water Co.*, 2008-NMCA-143, ¶ 12 (discussing nature of MDWCAs as public corporations established under state law); Eugene McQuillin, *The Law of Municipal Corporations* § 2:9 (3d ed.) (explaining that “a test as to whether an organization is a municipal corporation, using the term in its strict sense, is whether it has the power of local government”).

Our conclusion that MDWCAs are exempt from property tax is further supported by our previous determination that water and sanitation districts—entities that share many similarities with MDWCAs—are constitutionally exempt from property tax. *See* Letter from Patrick T. Simpson, Assistant Att’y Gen., to Sen. Mary K. Papen, N.M. State Senate, 2002 WL 32082312 (Apr. 15, 2002) (“We therefore conclude that water and sanitation districts, being political subdivisions of the state or a county, and public or quasi-municipal corporations, should most reasonably be included within the constitutional exemption from taxation.”); *Moongate Water Co.*, 2008-NMCA-143, ¶¶ 14-20 (discussing the significant similarities between MDWCAs and water and sanitation districts).

The powers of MDWCAs under current law distinguish them from the ones at issue in the previous Attorney General opinion on this subject. In 1968, our opinion concluded that MDWCAs “are neither ‘bodies politic’ nor ‘instrumentalities, nor agencies of the state government’ as used in *State v. Board of Trustees of Town of Las Vegas*,” 1922-NMSC-029, 28 N.M. 237, 210 P. 101. N.M. Att’y Gen., No. 68-38 (Apr. 9, 1968). However, in 2006, the Legislature substantially revised the SPA, unequivocally establishing MDWCAs as public bodies and political subdivisions of the State. *See* 2006 N.M. Laws ch. 60, §§ 2, 6 (designating MDWCAs as political subdivisions of the state and expanding their powers). These amendments expressly recognized that MDWCAs possess the precise characteristics of a municipal corporation our previous opinion found lacking.

You additionally asked about the Legislature’s power to exempt property from valuation for property tax purposes, in particular the exemption in Section 7-36-28(G). “The Legislature’s inherent authority and discretion to exercise the State’s power of taxation is plenary except in so far as limited by the Constitution.” *El Castillo Ret. Residences v. Martinez*, 2017-NMSC-026, ¶ 26, 401 P.3d 751 (internal quotation marks and citation omitted).

Pursuant to NMSA 1978, Section 7-36-28(G) (2009), “[c]ommercial water property owned or sold by a nonprofit mutual domestic water association is exempt from valuation for property taxation purposes.” Commercial water property is defined as “privately owned pipelines, tanks, meters, plants, hydrants, materials and supplies, whether in service, in stock or under construction, owned and operated as a utility for the purpose of transmitting, storing, measuring or distributing water

for sale to the consuming public, excluding general buildings and improvements[.]” Section 7-36-28(B)(1).

“Article VIII, Section 3 operates as a limit on the Legislature’s power to redefine categories of property which will be exempt from taxation.” *El Castillo Ret. Residences*, 2017-NMSC-026, ¶ 29. Accordingly, Section 7-36-28(G) “may not be interpreted or applied to grant exemptions that are not authorized by Article VIII, Section 3.” *Id.* ¶ 30.

Beyond the constitutional property tax exemptions addressed above, Article VIII, Section 3 additionally provides that “[e]xemptions of personal property from ad valorem taxation may be provided by law if approved by a three-fourths majority vote of all the members elected to each house of the legislature.” N.M. Const. art. VIII, § 3; *cf. El Castillo Ret. Residences*, 2017-NMSC-026, ¶ 30 (explaining that New Mexico voters enacted this provision in 1972, “to give a supermajority of the Legislature the limited authority to exempt personal property from taxation”).

Section 7-36-28(G), enacted by HB 297 (2009), passed the Legislature with unanimous consent,¹ thereby adhering to the supermajority requirement in the Constitution. Accordingly, insofar as the statutory exemption is understood to exempt personal property from taxation, the exemption complies with the Constitution. *See El Castillo Ret. Residences*, 2017-NMSC-026, ¶ 30 (affirming the Legislature’s authority to exempt personal property from taxation but noting that “no constitutional authority has been granted for the Legislature to exempt real property by statute”).

Lastly, we observe that a Taxation and Revenue Department regulation opines that the property of MDWCAs is not exempt from property taxes. 3.6.5.15(I) NMAC. Because 3.6.5.15 NMAC was last revised in 2001, we do not understand it to consider subsequent, significant amendments to the SPA or Section 7-36-28(G). *Cf. Jones v. Emp. Servs. Div. of Hum. Servs. Dep’t*, 1980-NMSC-120, ¶ 3, 95 N.M. 97, 619 P.2d 542 (“If there is a conflict or inconsistency between statutes and regulations promulgated by an agency, the language of the statutes shall prevail.”).

Conclusion

It is the opinion of the New Mexico Department of Justice that the property of Mutual Domestic Water Consumers Associations is exempt from property taxation, pursuant to Article VIII, Section 3 of the New Mexico Constitution and Section 7-36-28(G).

You have requested an opinion on this question presented to our office. The request and the opinion provided herein will be published on our website and made available to the general public. If you

¹<https://www.nmlegis.gov/Legislation/Legislation?Chamber=H&LegType=B&LegNo=297&year=09>

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have any questions regarding this matter, or if our office may be of further assistance, please let us know.

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