

Opinion No. 13-1130

November 1, 1913

BY: FRANK W. CLANCY, Attorney General

TO: Honorable Ralph C. Ely, Deming, N. M.

TAXATION.

No general rule that an irrigation plant must be assessed with the land to be irrigated as one property when the ownership may be distinct.

OPINION

{*312} I have today received your letter of yesterday relative to the assessment of property of the Little Vineyards Water Users Association under the order made by the State Board of Equalization, requiring assessors to make assessments of omitted property, "unless it should be found that the property has been already properly assessed." In the list of omitted property appears a statement of two conveyances from the Little Vineyards Company to the Little Vineyards Water Association, transferring wells, ditches and right of way.

Your position is that, all of the land upon which the wells and ditches are to be used having been assessed as the property of the Little Vineyards Company, it would not be proper to assess the wells, ditches and right of way separately, as this would be, in effect, a double taxation. The argument in favor of this position must be that the wells and ditches contribute the greater part, at least, of the value of the land, and that the land and water cannot be separated as the one gives value to the other and must be assessed as a whole.

I am not at all sure that this would be true as a general rule, but I understand that, in this case, the ownership of the two kinds of property is practically identical, and that you have had the whole included in one assessment. If you can show that to the satisfaction of the assessor, I think that he would be justified in considering the property included in our order as having been already properly assessed.

We can readily see that an irrigation company, formed for the purpose of storing and selling water, would have a valuable property entirely aside from the land to irrigate which it was formed to furnish water, and that the land with different owners would be quite distinct from the water property, so that we cannot lay down any general rule that an irrigation plant must be assessed with the land to be irrigated as one property when the ownership may be distinct.

{*313} I began this letter on the 1st, but was interrupted so that I have not been able to finish until the third.