

Opinion No. 22-3318

March 9, 1922

BY: HARRY S. BOWMAN, Attorney General

TO: Mr. Walter Rhodes, Village Clerk, Grenville, New Mexico.

Levy of Tax for Use of Water in Municipalities.

OPINION

{*133} In reply to your letter of the 7th instant asking if an ordinance levying a tax of one dollar for family use and fifty cents for animal use of water can be sustained, the tax levy being made by an ordinance for the purpose of maintaining the water supply for the above named purposes, I wish to advise:

The answer to your inquiry depends upon the law under which your village was incorporated.

Section 3747, Code 1915, provides that the boards of trustees of villages incorporated under the provisions of Chapter 32, Session Laws of 1891, shall have and possess all the general and other powers conferred on incorporated towns for the good government, order and welfare thereof. Section 3563, Code 1915, provides that municipal corporations organized under Article 2 of that chapter should have the general powers and privileges granted and provided in the sections of the article. By the circuitous manner above mentioned, villages organized under the laws of 1891 possess the same powers as those conferred upon incorporated towns, and incorporated towns have the same powers conferred upon them as upon cities. In other words, villages incorporated under the law of 1891 have all the powers which are conferred upon towns and cities.

Section 10 of Chapter 32 of the Laws of 1891 hereinbefore mentioned, provides that towns and villages incorporated under that act shall have the power by ordinance to provide a supply of water, by the construction and regulation of wells.

The power to provide a supply of water must necessarily imply a right to levy a tax so that this power may be executed.

Therefore, if your village was incorporated under the laws of 1891, an ordinance along the lines suggested in your letter would be valid.

Sub-section 73, Section 3564, Code 1915, the act which prescribes the powers of incorporated cities and towns, authorizes the constructions of public wells and cisterns and the levy of an equitable and just tax upon consumers of water for the purposes of defraying the expenses of such improvements.

This is authority for the levy of a tax to pay for cost of improvements and does not specifically authorize the levy of a maintenance tax, but as in the section mentioned from the Laws of 1891, the power to construct and operate wells for the supplying of water to a community must necessarily imply a power to levy a tax to support such operation.

Chapter 98, Laws 1921, authorizes cities and towns and such incorporated villages of 500 or more inhabitants as have complied with the provisions of Chapter 7 of the Session Laws of 1919, to contract for, establish, construct and maintain waterworks and sewers.

{*134} Chapter 7 of the Laws of 1919, mentioned in Chapter 98, requires the taking of a census to ascertain the number of inhabitants within the limits of the village.

Under the last mentioned act, if the provisions of the law have been followed and the number of inhabitants reaches 500 or more, an ordinance such as you suggest would be valid in order to maintain a water plant for the purpose of supplying water to the community.