

Opinion No. 46-4948

September 9, 1946

BY: C. C. McCULLOH, Attorney General

TO: Warren H. Booker, Director Sanitary Engineering and Sanitation Division
Department of Public Health

{*270} I am in receipt of your letter of August 27, 1946 in which you ask whether the State College or any property belonging to it can be incorporated in a sanitary district under Chapter 80 of the Laws of 1943.

This chapter will be found in the Supplement to the 1941 Compilation as Section 77-3401 etc. The initiation, organization and operation of such districts is vested in resident taxpayers. Thus, if such a district were formed, including the property of State College, the College would have no say in its organization and operation. Further, a sanitary district organized under Chapter 80 is financed through taxation. When bonds are issued, ad valorem taxes are levied to pay such bonds.

In view of the foregoing, it is my opinion that the property of State College could not be included in a sanitary district since property of the state is not subject to taxation under Article 8, Section 3 of the Constitution. See *Lake Arthur D. D. v. Field*, 27 N.M. 183.

Further, no statute could be constitutionally enacted authorizing the taxation of state property. However, the statute might be revised to provide for the financing of the district {*271} by special assessments. If such a statute were enacted, providing specifically that the state and its agencies pay a special assessment based on benefits received, such a statute would be constitutional. See *Lake Arthur D. D. v. Field*, supra, and *In re proposed Middle Rio Grande Conservancy District*, 31 N.M. 182.

However, it occurs to me that the following procedure might be followed as a solution to your problem: A sanitary district could be formed covering all of the property not owned by the State College. The State College could then contract with the district for services. I do not believe there is any question but what the College would have the authority to enter such a contract, just as it contracts for lights or water.

I enclose herewith a copy of this opinion for your convenience.

By ROBERT W. WARD,

Asst. Atty. General