

Opinion No. 56-6563

December 31, 1956

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. D. M. Smith, Jr., State Comptroller, State Capitol Building, Santa Fe, New Mexico

You have asked for our opinion on the question as to whether or not the general ten year statute of limitations on taxation applies to: (1) special assessments such as paving and, (2) conservancy district assessments.

Our Supreme Court has held that it is not the ten year statute of limitations which applies to special paving assessments, but that it is Section 23-1-24, N.M.S.A., 1953, which applies. The latter is a four year statute. *Altman vs. Kilburn*, 45 N.M. 453. Thus it is that as to special assessments such as paving, the applicable statute of limitations is that provided for in Section 23-1-24 which prescribes the period as four years.

Regarding conservancy district assessments the question is very close. This is made so by the provisions contained in Section 75-30-16, N.M.S.A., 1953. This section, a part of the Conservancy District Act, provides:

"The revenue laws of this state for the assessment, levying, and collection of taxes for state and county purposes, except as herein modified, shall be applicable for the purposes of the district in the collection of assessments including the enforcement of penalties and forfeiture for delinquent taxes. All interest and penalties that may be collected on delinquent assessments levied and assessed for district purposes shall be by the respective county treasurers delivered to the treasurer as herein provided for the delivery of assessments collected by such county treasurer."

This section raises the question as to whether or not the ten year statute of limitations was incorporated into the Conservancy District Act. It may perhaps be that it was. However, any ruling by this office either that it did or that it did not would be merely a guess. Thus, instead of giving you our opinion on this we would rather advise you as follows: It is reasonably certain that collections for these assessments may not be made beyond ten years. However, there is a possibility that, as in paving assessments and under the holding of *Altman vs. Kilburn*, *supra*, collection for these assessments may be barred after four years. Thus the suggested procedure would be that attempts should be made to collect on these assessments for a period of up to ten years, but that special care should be taken that no assessments be permitted to be delinquent for more than four years. In this manner, and until the question is determined by our Supreme Court, the districts would be assured of collecting the maximum possible under the present status of the law.

I trust the above helps answer your inquiries.

By: Santiago E. Campos

Assistant Attorney General