

Opinion No. 61-10

January 24, 1961

BY: OPINION OF EARL E. HARTLEY, Attorney General Norman S. Thayer, Assistant Attorney General

TO: Mr. Kenneth A. Patterson, Assistant District Attorney, Second Judicial District, Bernalillo County Courthouse, Albuquerque, New Mexico

QUESTION

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When a preliminary fund assessment has been properly levied by the board of directors of a conservancy district, and certified to the boards of county commissioners of the counties in which the district is located, are those boards of county commissioners under a mandatory duty to certify the assessment to the county assessor for inclusion in the next annual tax levy, or do the boards of county commissioners have power to refuse to certify the assessment?

CONCLUSION

The duty is mandatory.

OPINION

ANALYSIS

Section 75-30-2, N.M.S.A., 1953 Compilation, authorizes the board of directors of conservancy districts to fix the amounts of a property assessment upon all the property within the district, not to exceed six mills for each dollar of assessed valuation thereof. Sub-section (2) of Section 75-30-2 provides:

"The said assessment shall be levied by resolution of the board; shall be known as the Preliminary Fund Assessment; and the amount of assessment shall be certified to the boards of county commissioners of the various counties in which the district, or any portion thereof, is located and by them included in their next annual levy for state and county purposes. Said amount shall be collected for the use of such district in the same manner as are taxes for county purposes, and the revenue laws of the state for the levy and collection of taxes for county purposes, except as herein modified, shall be applicable for the levy and collection of the amount certified by the board of such district as aforesaid including the enforcement of penalties and forfeiture for delinquent taxes. All collections made by the county treasurer pursuant to such levy shall be paid to the treasurer of the district on or before the tenth day of the next succeeding calendar

month and a list of the payers, the amounts paid by each and the property covered thereby shall accompany such remittance."

The mandatory wording of the quoted statute is persuasive, especially when coupled with the absence of any indication that boards of county commissioners have power to refuse to certify the assessment. Moreover, the control of conservancy districts is not vested in the boards of county commissioners, but in the districts' respective boards of directors, whose powers are broad. See Section 75-28-18 and 75-28-27, N.M.S.A., 1953 Compilation. It takes but little reflection to realize that boards of county commissioners will control conservancy districts if they have the power to refuse to collect the taxes on which the districts depend. It has been said that the power to tax involves the power to destroy, but in this case the power not to tax involves the power to destroy. We are unwilling to ascribe that power to the boards of county commissioners in the absence of express statutory command.

Therefore, it is our opinion that if a preliminary fund assessment has been levied by resolution of the board of directors of a conservancy district, then the boards of county commissioners to whom the assessment is certified have a mandatory duty to certify the assessment to the county assessor for inclusion in the next annual tax levy.