

## **Opinion No. 67-10**

January 20, 1967

**BY:** OPINION OF BOSTON E. WITT, Attorney General

**TO:** Mr. William S. Martin, Jr. Assistant District Attorney Sixth Judicial District P. O. Box 1025 Silver City, New Mexico

### **QUESTION**

#### **FACTS**

The city fathers of the Village of Central are contemplating passing a new ordinance for an assessment for street maintenance.

#### **QUESTIONS**

1. May a flat fee assessment be levied against each person who has a city utility connection in his name regardless of whether or not such person owns real estate abutting a street in Central?
2. May a flat fee assessment be levied on each abutting property owner regardless of amount of abutting footage?
3. May assessment be levied on each abutting property proportionate to frontage but with established minimum and maximum charge?

#### **CONCLUSIONS**

1. No.
2. No.
3. No.

### **OPINION**

#### **{\*14} ANALYSIS**

The controlling section for all of the questions asked is Section 14-50-3, N.M.S.A., 1953 Compilation (P.S.). That section states:

"STREET SPRINKLING AND MAINTENANCE -- ASSESSMENT -- LIEN FOR ASSESSMENT. -- A. Whenever the governing body determines that the streets shall be

watered or maintained in whole or in part at the expense of the owner of any property which abuts upon the streets, the governing body shall determine:

- (1) The expense of watering or maintaining the streets;
- (2) The proportion of the expense to be borne by the owner of property which abuts upon the streets;
- {\*15} (3) The charge to be assessed against each lineal foot of frontage of the abutting property; and
- (4) Assess, according to its frontage, each tract or parcel of abutting property its proportionate share of the expense of watering or maintaining the streets.

B. The assessment for the expense of water or maintaining the streets shall be collected as authorized in section 14-22-1 New Mexico Statutes Annotated, 1953 Compilation, and shall be a lien against the tract or parcel of property abutting the street and the lien shall be enforced as provided in sections 14-35-1 through 14-35-5 New Mexico Statutes Annotated, 1953 Compilation."

It is apparent from the first paragraph in this section that the intent of the Legislature was to assess owners of property which abuts the street being maintained. Accordingly, the cost is not to be borne by any person simply because he has a city utility connection in his name. The property he owns must abut the street being maintained. The answer to your first question is no.

Further, it is obvious that subsection A (3) pertains to your second question. The legislature intended that the assessment was to be made per lineal foot of frontage of the abutting property. Accordingly, the property owner is to be assessed on how much property he owns that abuts on the street. He is not to pay a flat fee.

No mention is made in the statute of any minimum and maximum charge. The statute is explicit. The charge is to be assessed on the basis of each lineal foot of frontage property owned. That is to be the basis of the assessment, with no embellishments.

Accordingly, the answer to all three of your questions is no.

By: Donald W. Miller

Assistant Attorney General