

## Opinion No. 68-38

April 9, 1968

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

**TO:** Honorable Emmett C. Hart State Senator 1623 South 4th Tucumcari, New Mexico

### QUESTIONS

Is a non-profit corporation organized to provide a community water system pursuant to section 14-28-1, et seq., N.M.S.A., 1953 Compilation (P.S.) subject to the payment of ad valorem taxes.

### CONCLUSION

Yes.

### OPINION

#### {\*69} ANALYSIS

Article VIII, Section 1 of the New Mexico Constitution requires a uniform levy of ad valorem taxes on all subjects of taxation. Article VIII, Section 3 of the New Mexico Constitution provides for the following exemptions from ad valorem taxation:

{\*70} "The property of the United States, the state and all counties, towns, cities and school districts, and other municipal corporations, public libraries, community ditches and all laterals thereof, all church property, all property used for educational or charitable purposes, all cemeteries not used or held for private or corporate profit, and all bonds of the state of New Mexico, and of the counties, municipalities and districts thereof shall be exempt from taxation."

The issue presented here is whether a community water association formed pursuant to Section 14-28-1, et seq., N.M.S.A., 1953 Compilation (P.S.) is an "other municipal corporation" as that term is used in Article VIII, Section 3, supra.

The specific provisions of our constitution was considered at length in **State v. Board of Town of Las Vegas**, 28 N.M. 237, 210 Pac. 101 (1922). In that decision the Court considered whether land grants were municipal corporations. The conclusion was that they were not and in so concluding the Court stated:

"The phrase 'other municipal corporations' did not extend to organizations like the appellant, nor to corporations nor bodies which by their nature were not bodies politic and corporate, nor instrumentalities, nor agencies of the state government."

In **McQuillen, Municipal Corporations**, (3rd Ed.), Vol 1, Section 2.29 it is stated that water districts are generally held to be "quasi-municipal corporations, if any kind of corporation, rather than municipal corporation in the strict sense of the word.

The organization being considered here is similar to that of an irrigation district and our courts have uniformly held that irrigation districts are not municipal corporations.

**Hooker v. Village of Hatch**, 66 N.M. 184, 344 P.2d 699 (1959). **Davy v. McNeill**, 31 N.M. 7, 240 Pac. 482 (1925). In the latter case **State v. Board of Trustees of Town of Las Vegas**, supra, was cited with approval.

Cooperative water associations are neither "bodies politic" nor "instrumentalities, nor agencies of the state government" as used in **State v. Board of Trustees of Town of Las Vegas**, supra. They are organized for one purpose only and that is to establish and maintain a water system. We, must conclude that these associations are not "other municipal corporations" as that term is used in the state constitution and therefore are subject to advalorem taxation. See Attorney General Opinions, No. 67-50 and 67-90.

By: Myles E. Flint

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