

Opinion No. 68-58

June 5, 1968

BY: OPINION OF BOSTON E. WITT, Attorney General

TO: Honorable Severino Martinez State Representative Box 490 Espanola, New Mexico

QUESTION

QUESTIONS

1. Can an irrigation district take over the duties to levy, assess and collect the taxes of the district as provided for by Section 75-26-24, N.M.S.A., 1953 Compilation?
2. Assuming that such a district can, and has taken over these duties, would the treasurer of such a district have the same authority to collect taxes as the county treasurer has under Section 72-7-1 et seq., and to sell property for delinquent taxes as provided for under Section 72-8-1 et seq.?
3. If the district treasurer has the authority to sell property for delinquent taxes, would he have authority to issue a certificate of redemption as provided for by Section 72-8-10?
4. Would the district be entitled to service of process in tax suits without advancing costs, as provided in Section 72-7-23?
5. Assuming the district has taken over the duties under 75-26-24, what would be the procedure for such district to transfer the duties back to the county treasurer?
6. Is any further legislation necessary to give such a district the authority to do all things which the county treasurer can do under 72-7-1 et seq., and 72-8-1 et seq.?

CONCLUSIONS

1. Yes.
2. Yes.
3. Yes.
4. Yes.
5. By resolution.
6. No.

OPINION

{*96} ANALYSIS

Section 72-26-24, N.M.S.A., 1953 Compilation provides as follows:

Whenever any board of directors of any irrigation district, organized under the laws of the state of New Mexico, shall decide by appropriate resolution that it is to the best interest of such district to assess, levy and collect the taxes of such district it may take over such duties.

We believe that it is clear that an irrigation district may take over the duties of assessing, levying and collecting taxes due the district if the proper procedure is followed. If the board of directors of an irrigation district does decide to take over the levying, assessment and collection of taxes of the district it must notify the boards of county commissioners of the counties in which the district lies of its intention. Notice of this intention is to be given by serving on the chairman of each county commission involved a copy of the resolution of the board of directors of the irrigation district on or before the last day of February of the year in which the district intends to take over the levying, assessment and collection of taxes of the district. Section 75-26-26, N.M.S.A., 1953 Compilation.

Next, we are asked if an irrigation district does take over the levying, assessment and collection of taxes owed to the district, if the district has the same authority to collect taxes as the county treasurer {*97} has under Sections 72-7-1 et seq., and 72-8-1 et seq. Section 75-26-34, N.M.S.A., 1953 Compilation provides as follows:

Whenever any such irrigation district shall take over the levy, assessment, and collection of the taxes of such district, **the treasurer of such district shall have all the powers and be charged with all the duties, with reference to the collection of delinquent taxes of such district as are imposed by law on the county treasurer, with reference to the collection of state and county taxes, and the provisions by law regarding the collection of delinquent state and county taxes by suit, judgment, issuance and sale of tax sale certificates and tax deeds, or otherwise, shall be applicable to collection of delinquent taxes of such district;** Provided, however, that any tax sale certificate or tax deed, issued by the treasurer of such district shall be issued, subject to state, county and municipal taxes. (Emphasis added)

Sections 72-7-1 through 72-7-38, N.M.S.A., 1953 Compilation provide for the collection of delinquent taxes and Sections 72-8-1 through 72-8-52, N.M.S.A., 1953 Compilation provide for the sale of real property for delinquent taxes. It is our opinion that Section 75-26-34, supra, grants to the district treasurer the same powers and duties for the collection of the assessments of the irrigation district that are given to the county treasurers by Sections 72-7-1 through 72-7-38, supra, and 72-8-1 through 72-8-52, supra, for the collection of delinquent taxes. The answer to the second, third and fourth questions are therefore yes.

In answer to the fifth question, if the board of directors deem it no longer in the best interest of the district to assess, levy and collect the taxes of the district the board may pass a resolution so stating. The resolution should further provide that the duties of collection of taxes owed to the district are transferred back on the county treasurer.

In view of the above answers, we do not believe that it is necessary for the legislature to enact additional legislation in this area.

By: Gary O'Dowd

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