

Opinion No. 76-01

January 27, 1976

BY: OPINION OF TONEY ANAYA, Attorney General David Metz McArthur, Assistant Attorney General

TO: Vernon N. Kerr, New Mexico State Representative, 113 Sherwood Boulevard, Los Alamos, New Mexico 87544

QUESTIONS

QUESTIONS

1. In Chapter 219, Laws of 1975, Section 2(A), how much of the "County Improvements Law" is incorporated? Is the "County Improvements Law" adopted in its entirety as an integral part of Chapter 219?
2. If the "County Improvements Law" is incorporated as an integral part of Chapter 219, Laws of 1975, can the definitions of Section 2 (C) transposed into Section 15-56-2 of the "County Improvements Law" be construed as limiting the use of Chapter 219 to only Class A Counties?
3. Under Section 2(B), Chapter 219, Laws of 1975, what specifically is the "mode" of financing deemed by the "County Improvements Law"? How does this "mode" affect the provisions for financing which are in Article 18, Sections 75-18-1 through 75-18-49, which is the "water and sanitation district" act?
4. Under Section 2(B) of Chapter 219, Laws of 1975, how does the "mode" affect the making of improvements?
5. Under Section 2(B) of Chapter 219, Laws of 1975, what is meant by ". . . additional to, and separate from, all other methods and procedures"? What are the other methods and procedures?
6. Under Chapter 219, Laws of 1975, does Section 2 override the provisions of Section 75-18-25 of the "water and sanitation district" act where this latter section provides for an election by tax paying electors? It would appear that by inclusion of the "County Improvements Law" (NMSA 15-56-1 through 15-56-35), in the "water and sanitation district" act that there would be no provision for a taxpayer election to approve either a tax levy or the issuance of bonds. There is only the provision for protest contained in Section 15-56-8. Is this correct?
7. Does the inclusion of the "County Improvements Law" in Chapter 219, Laws of 1975, obviate the limitations contained in Section 15-54-3 of the "Community Service District

Act" where the latter could be in conflict with Section 15-56-13 of the "County Improvements Law"?

8. Does the inclusion of the "County Improvements Law" in Chapter 219, Laws of 1975, negate Sections 75-18-5 through 75-18-8 of the "water and sanitation district" act with respect to the formation of a district, or does it allow for a choice whether either the petition to the court (as per 75-18-5 through 75-18-8) could be used or the provisional order method (as per 15-56-4) of the "County Improvements Law"?

9. It would appear that under the "County Improvements Law" a water and sanitation district, as per Chapter 219, Laws of 1975, could be established by a resolution wherein that resolution contains within it the inherent right to at a later date issue bonds. Does that resolution if published as per Chapter 350, Laws of 1975, comply with the provision of Chapter 350 for the issuance of public securities or does Chapter 350 demand that a separate publication must be made in order for public securities to be issued under the "County Improvements Law"? Further, would the provisions of Section 4 of Chapter 350 sanction irregularities in the procedure for issuance of public securities where the securities were authorized under the "County Improvements Law" at a time later than the 30 day limit per challenge?

10. Could a developer meet the requirements of the New Mexico Subdivision Act (proposals for water supply plan and system, sewage, etc.) by stating in his plat application (and disclosure statement) that one or all of the regular services will be provided by a water and sanitation district (created for that purpose by the developer under Chapter 219, Laws of 1975)? If the answer is negative, but a county commission were to accept such a proposal, what remedy would then be available to challenge the commission's acceptance and approval and by whom?

CONCLUSION

See analysis.

OPINION

{*38} ANALYSIS

In rendering this opinion this office must make the assumption that Chapter 219, Laws of 1975, is constitutional in all aspects and that any deficiencies or conflicts that occur in or between any provisions of the water and sanitation district laws (being Sections 75-18-1 through 75-18-49, NMSA 1953 Comp.), the County Improvements Law (being Sections 15-56-1 through 15-56-35, NMSA 1953 Comp.), the provisions of Chapter 219, Laws 1975, or any other provision of law can be resolved by the use of the applicable principles of statutory construction and that those laws conform with all requirements of the Constitutions of the United States and the State of New Mexico.

In order to answer the above questions, the following provisions of law must be considered: the water and sanitation district laws, **supra** ; the Community Service District Act, Sections 15-54-1 through 15-54-5, NMSA 1953 Comp.; the County Improvements Law, **supra** ; and Chapter 219, Laws 1975.

Section 2, Chapter 219, Laws 1975, states:

"75-18-50. AUTHORITY TO PROCEED UNDER COUNTY IMPROVEMENTS LAW. --

{*39} A. Any district organized as a water and sanitation district is authorized to conduct proceedings in accordance with the provisions of the County Improvements Law, as from time to time amended.

B. The authorization contained in this section shall constitute full authority for the exercise by a water and sanitation district of powers granted in the County Improvements Law and shall be deemed a mode of financing and making the improvements described in Section 75-18-2 NMSA 1953 additional to, and separate from, all other methods and procedures.

C. In conducting any such proceedings, 'county' means a water and sanitation district, and 'board' means the board of directors of such district."

The Community Service District Act places upon every district within its definitions certain mandatory limitations and procedures that must be complied with when a district issues securities.

The County Improvements Law is an act which provides for a method of financing improvements made by a county. The methods of financing improvements under the County Improvements Law and the procedures necessary to implement those methods are made available to a water and sanitation district by Chapter 219, Laws 1975.

In rendering this opinion this office must consider whether or not the proceedings and actions of a water and sanitation district must continue to comply with the requirements of the Community Service District Act.

The water and sanitation district constitutes a single or multipurpose special district organized as a local public body of this state for the purpose of constructing and furnishing any urbanoriented service which any other political subdivision of this state is authorized to perform. It therefore falls within the definition of community service districts set forth in Section 15-54-2(A), **supra**. Each of the securities provided for in the County Improvements Law is a "security issued by a community service district representing indebtedness of the district and including but not limited to bonds." Therefore those securities are "negotiable securities" within the definition of that term as it occurs in Section 15-54-2(C) of the Community Service District Act.

If the Community Service District Act applies to a water and sanitation district operating pursuant to the Community Service District Act, then those portions of the County Improvements Law which permit the county to do some action that the Community Service District Act prohibits the district from doing, would not apply to the district except to the extent an action by the district would be compatible with both statutes. Such a result is supported by the principle of construing statutes in pari materia which in essence requires that statutes which govern the same subject matter be read together so as to give effect to each. This result is also supported by the principle of statutory construction which states that the specific statute (which in this case is the Community Service District Act which expressly applies to water and sanitation districts) governs over a general statute (which in this case is the County Improvements Law which provides methods of financing for either counties or districts).

{*40} Section 2, Chapter 219, Laws 1975, refers to the County Improvements Law in general terms. It grants the district the authority to "conduct proceedings" under the County Improvements Law, "exercise . . . the powers granted" by that law and utilize its "mode of financing". The legislature did not amend the County Improvements Law to include a water and sanitation district. The only access of a water and sanitation district to the County Improvements Law is provided by this 1975 amendment to the laws governing water and sanitation districts.

Because the access provided to the mechanisms of the County Improvements Law is general in nature, a number of conflicts arise such as the purposes of the two acts as set forth in 75-18-2, **supra**, and 15-56-5 of the County Improvements Law. Section 2, Chapter 219, Laws 1975, indicates that conflict is to be resolved by the utilization of the purposes specifically enacted for the water and sanitation district (§ 75-18-2, **supra**) rather than those that apply to the county through § 15-56-5, **supra**.

There is no provision in any of the statutes with which we are here concerned that directs or implies that any limitations or requirements of the Community Service District Act that apply to the water and sanitation districts are removed by Chapter 219, Laws 1975, or the County Improvements Law.

The failure to amend the County Improvements Law to include the water and sanitation districts, the reference to the County Im-Improvements Law through the amendment to the water and sanitation district laws, the lack of any indication that any existing limitations on a district should be removed, and the specific resolution by the legislature of the conflicts in the purpose clauses by applying the statute that specifically applies to water and sanitation districts require the conclusion that the intent of the legislature was to resolve inconsistent provisions between the County Improvements Law, as it applies to the districts, and the Community Service District Act which was enacted specifically for the districts by rendering not applicable that portion of the County Improvements Law which is inconsistent.

QUESTIONS 1

Section 2, Chapter 219, Laws of 1975, enacted a new section, Section 75-18-50, NMSA 1953 Comp., entitled Authority to Proceed Under County Improvements Law. The language of this section provides that the water and sanitation district can utilize the powers granted in the County Improvements Law and conduct proceedings in accordance with its provisions and that the water and sanitation district may utilize the mode of financing that the County Improvements Law provides for the purpose of making the improvements described in Section 1, Chapter 219, Laws 1975. In conducting any such proceedings any reference to "county" in the County Improvements Law is to be deemed a reference to the water and sanitation district; any reference to "board" in the County Improvements Law is deemed a reference to the directors of the water and sanitation district.

The County Improvements Law provides that a county may establish an improvement district by following certain procedures. Once it is created, the improvement district is entitled to finance improvements by certain specified methods, these being basically the {*41} establishment of assessment rolls and the issuance of negotiable coupon bonds, assignable certificates or refunding bonds. The County Improvements Law further provides for a method of appealing assessments, a method of collecting assessments and spells out in further detail the rights of property owners, bond holders and the rights and responsibilities of the Board of County Commissioners.

The effect of the language in Chapter 219, Laws of 1975, is to provide that the water and sanitation district acting through its directors can establish improvement districts in order to accomplish the wide range of improvements provided for in Section 1, Chapter 219, Laws of 1975.

The following is a brief discussion of the extent to which the various provisions would apply to the water and sanitation district.

a. Each section of the County Improvements Law would apply to a water and sanitation district to the extent that the water and sanitation district was utilizing an improvement district pursuant to that law except as discussed below.

b. **Section 15-56-2, Definitions.** The definitions of this section would apply to an improvement district formed by the water and sanitation district insofar as they are consistent with the other applicable provisions of law.

Subsection F would be modified to refer to Section 75-18-2, **supra**, instead of Section 15-56-5, **supra**.

Subsection G relating to publication, applies except when the publication is pursuant to the requirements of § 15-5-3B of the Community Service District Act. For the more general requirement found in Section 15-54-3(C) (1) (c) of the Community Service District Act in which there is a requirement of publication but the method of publication is not specified, the publication requirements of subsection G of Section 15-56-2, **supra**, would be applicable.

c. **Section 15-56-5, Purpose of Improvement District.** References in the County Improvement Law to the purposes of that law as specified in Section 15-56-5, **supra**, should be interpreted as referring instead to Section 75-18-2, **supra**, when the improvement district is one that has been formed by a water and sanitation district.

d. **Section 15-56-6, Initial Procedure.** This section sets out the procedures to be followed by the board of the water and sanitation district. Section 2, Chapter 219, Laws 1975, provides that the purposes for which a water and sanitation district may utilize the provisions of the County Improvements Law are those set forth in Section 1, Chapter 219, Laws 75-18-2, **supra**. The provisions of the Community Service District Act would apply to any issuance of negotiable securities by the water and sanitation district pursuant to the County Improvements Law.

e. **Section 15-56-13, Authority to Issue Negotiable Coupon Bonds or Assignable Certificates.** (As amended.) It {42} must again be mentioned that this section would be subject to the requirements and limitation of the Community Service District Act. Subsections D and E of this section appear to provide for the issuance of the securities at private sale. Private sale is prohibited by the Community Service District Act and any sale of the securities would need to be in conformance with that Act. In addition, the rate of interest of the securities would be subject to the 6% limitation found in Section 15-54-3(C) (1) (a) of the Community Service District Act.

f. **Section 15-56-20, Assessment of Funds - Expenditures - Misuse - Penalties.** This section including the penalties would apply to the water and sanitation district, its board and any person who uses money in an improvement fund.

g. **Section 15-56-30, Refunding of Improvement Bonds - Authority; Section 15-56-31, Default - Petition of Bond Holders - Exchange; Section 15-56-32, Resolution for Refunding Bonds - Conditions - Sale or Exchange; Section 15-56-33, Payment of Assessment of Refunding Bonds - Maximum Term - Interest - Prepayment - Liens; Section 15-56-34, Construction of Sections 15-56-31 through 15-56-33.** These sections would apply to the issuance of refunding bonds by the water and sanitation district pursuant to the County Improvements Law subject to the provision and limitations found on such actions in the Community Service District Act.

h. **Section 15-56-35, Liberal Interpretation.** The County Improvements Law provides for a method of financing for the county to make improvements within that county. The water and sanitation district is not incorporated into the County Improvements Law; rather the water and sanitation district is permitted to utilize the powers, procedures and mode of financing provided by the County Improvements Law. For this reason the statutes specifying the interpretation to be given the County Improvements Law would not appear to be incorporated by the language in Section 2, Chapter 219, Laws 1975.

QUESTIONS 2

The County Improvements Law is not incorporated in its entirety as an integral part of Chapter 219, Laws of 1975.

The limitation to Class A Counties would not apply to a water and sanitation district proceeding under the provisions of the County Improvements Law pursuant to Section 2, Chapter 219, Laws of 1975. The term "board" as it is defined in Section 15-56-2(A) of the County Improvements Law has been specifically modified by Section 2, Chapter 219, Laws 1975, to read "Board" means the Board of Directors of such district. The substitution of that definition for a water and sanitation district utilizing the County Improvements Law specifically eliminates the limitation to Class A Counties.

QUESTIONS 3

From the recitation of the applicable {43} statutory provisions of the County Improvements Law, as set out in the analysis of question no. 1, it can be seen that the "mode of financing" in the County Improvements Law consists of the issuance of negotiable coupon bonds, assignable certificates or refunding bonds financed by the establishment of assessments against the property within the district. The issuance of those bonds and assessments must be in accordance with the procedures and limitations of the County Improvements Law and the requirements of the Community Service District Act.

QUESTIONS 4

Section 2(B), Chapter 219, Laws 1975, must be read in conjunction with Subsection A and Subsection C in order to fully understand the reference to "mode of financing". The water and sanitation district is empowered to make the improvements set out in Section 75-18-2, *supra*. There are many possible ways in which improvements such as those can be financed. However, by making available the procedures and powers of the County Improvements Law as a method of financing the improvements of the water and sanitation district, the legislature made available to the water and sanitation district the authority to issue the various bonds provided for in the County Improvements Law which are secured by assessments against property in the district. Prior to the enactment of Chapter 219, Laws 1975, this method of financing improvements had been limited to use by Class A Counties.

QUESTIONS 5

A water and sanitation district was previously authorized to levy a tax and issue negotiable certificate bonds and refunding bonds or to issue revenue bonds as a method of financing improvements within the district. Section 2(B), Chapter 219, Laws 1975, has empowered the water and sanitation district to proceed with the utilization of the additional methods of financing permitted by the County Improvements Law which consist of the utilization of assessments for the financing of negotiable certificate bonds, assignable certificates and refunding bonds. In proceeding with the issuance of the various securities provided for by the County Improvements Law, the water and

sanitation district board must comply with the procedures, requirements and limitations of the County Improvements Law. The methods of financing and the procedures for instituting those methods of financing are, as a result of the language "additional to, and separate from, all other methods and procedures," independent from the methods of financing found in the laws setting forth the water and sanitation district.

QUESTIONS 6

The requirements of Section 75-18-25, **supra**, that an election be held by the tax paying electors of a water and sanitation district before the issuance of obligations or bonds creating indebtedness applies only to obligations or bonds that are being issued pursuant to Sections 75-18-1 through 75-18-49, **supra**. The issuance by the water and sanitation district of bonds pursuant to the provisions of the County Improvements Law would not require the election specified in Section 75-18-25, **supra**. The only election required when a water and sanitation district issues bonds pursuant to the County Improvements Law is that election provided for in Section 15-56-8(C), **supra**, which is contingent upon a protest by 25% or more of the legal owners of record of the property {**44*} subject to the assessment in the improvement district.

QUESTIONS 7

The access to the provisions of the County Improvements Law provided for by Chapter 219, Laws 1975, does not affect the application of the Community Service District Act to the water and sanitation district. The water and sanitation district is subject to all requirements and limitations of the Community Service District Act. These limitations of the Community Service District Act apply to all issues of negotiable securities by the water and sanitation district regardless of whether that district is proceeding pursuant to the water and sanitation district laws or the County Improvements Law.

QUESTIONS 8

The inclusion of the County Improvements Law in Chapter 219, Laws 1975, permits a water and sanitation district acting as a county to form an improvement district. The County Improvements Law does not affect in any way the establishment of the water and sanitation district. The formation of the water and sanitation district is governed by the provisions of Section 75-18-4 through 75-18-9, **supra**, which require the formation of the district by the district court. This is the only way in which a water and sanitation district that operates pursuant to Sections 75-18-1 through 75-18-50, **supra**, can be formed. The provisional order method of formation of an improvement district may be utilized by a water and sanitation district that has been formed pursuant to Sections 75-18-4 through 75-18-9 in order to form an improvement district to carry out the purposes of Section 75-18-2, **supra**.

QUESTIONS 9

A water and sanitation district could be formed by resolution pursuant to the provisions of the County Improvements Law to form an improvement district and as a part of that formation specify assessments for the issuance of bonds. Publication of that resolution must, according to the provisions of Section 15-56-7, **supra**, provide for a hearing to be held. Section 15-56-8, **supra**, provides for the board at a hearing on its provisional order to create an improvement district to consider: (1) the propriety and advisability of constructing the project; (2) estimated cost of the project; (3) manner of paying for the project; and (4) the amount proposed to be assessed against the individual tract or parcel of land. The board, after hearing testimony at the hearing, could decide for any of the above reasons that it was not advisable to proceed with the project.

The board at the time of the hearing has issued only a provisional order and has not made a final determination as to whether or not the contemplated project, contemplated bonds, etc., are advisable. Chapter 350, Laws 1975, provides "A public body, of the state, after having adopted a resolution or ordinance authorizing the issuance of public securities, shall publish notice of the adoption of such resolution once in a newspaper of general circulation within the political subdivision, or in the case of the state of general statewide circulation. . . ." This statute anticipates a resolution authorizing the issuance of securities as opposed to one setting up a public hearing to determine the advisability of issuing securities as is contemplated in Sections 15-56-7 and 15-56-8, **supra**. For this reason publication of the resolution provided for in Sections 15-56-7 {45} and 15-56-8, **supra**, would not meet the requirements of Chapter 350, Laws 1975. In order for the requirements of Chapter 350, Laws 1975, to be complied with, the board would have to publish the resolution by which it makes the final determination on the project and its financing.

Section 4, Chapter 350, Laws 1975, provides for a perpetual bar to attacks on the validity of any proceedings preliminary to or in the authorization and issuance of the public securities covered by the published resolution. Such a bar would prohibit litigation of many irregularities which could take place in the issuance of such securities.

QUESTION 10

The New Mexico Subdivision Act (Sections 70-5-1 through 70-5-29, NMSA 1953 Comp.), provides that a county commission may not approve the plat of a subdivision if that subdivision does not conform to the requirements of the New Mexico Subdivision Act and the county regulations promulgated thereunder. Sections 70-5-11, 70-5-12 and 70-5-13, **supra**. The requirements for water supply, liquid waste disposal, solid waste disposal, terrain management, and roads are addressed in detail in the county regulations. The requirements of these regulations vary with each county. However, there are problems which will be uniformly experienced by most counties attempting to deal with the questions you have asked in question No. 10.

The statement by a subdivider that a water and sanitation district will provide some service or improvement that is required by county regulations may not meet the requirements of the New Mexico Subdivision Act and the county regulations. A water

and sanitation district is an elected body created by the laws of New Mexico over which a subdivider, even if he were a member of a board of a water and sanitation district, has no control. Such a statement could be accepted as valid by a county commission if the water and sanitation district had followed the proper procedures to secure the financing of the improvements, had obligated the district to furnish those improvements, and had sold the bonds that financed those improvements. If these steps had not been completed, the district could be prevented by its own board, by action of property owners in the district or by the inability to sell its bonds from providing the intended improvement. Prior to that degree of commitment to a project, the statement of the subdivider would be purely speculative. For all types of subdivisions, the subdivider must fulfill the requirements of the act and the county's regulations. Where the act or the regulations require an improvement, mere speculation by the subdivider as to how this may be accomplished does not meet the standards of the act.

The county must also review the disclosure statement to determine whether or not the subdivider can fulfill the proposals in the disclosure statement. Proposing to form a district to provide improvements would not be adequate to meet the requirements of 70-5-17 and 70-5-18, **supra**. The formation of a district is under the control of the district court and the actions that district may take are subject to the will of the district's board and its constituents. Such promises or proposals would be misleading to purchasers and violate both the disclosure and advertising provisions of the act, Sections 70-5-17 and 70-5-18(A) (1), **supra**. If a {46} district had obligated itself to furnish the improvements and issued and had sold the bonds to finance it, the subdivider would have to disclose the nature and amount of the obligation the purchaser would be subject to in order to satisfy the requirements of Sections 70-5-17 and 70-5-18, NMSA 1953 Comp.

The county commission must look to the subdivider as the person responsible for meeting the requirements of his disclosure statement, the New Mexico Subdivision Act, and the county regulations. The county commission could therefore require that the subdivider post a performance bond for the improvements even though the district was expected to furnish them.

The provisions of the New Mexico Subdivision Act relating to civil enforcement are self-explanatory and are as follows:

"70-5-26. Injunctive relief -- Mandamus. -- The board of county commissioners, the district attorney or the attorney general may apply to the district court to have a subdivider enjoined from selling or leasing land within the affected subdivision until he complies with the terms of this act [70-3-9, 70-5-1 to 70-5-29]. In addition, the district attorney or the attorney general may bring mandamus to compel compliance with the provisions of this act. However, nothing in this section shall be construed as limiting any common-law right of any person in any court relating to subdivisions."

1975

75-79

75-78

75-77

75-76

75-75

75-74

75-73

75-72

75-71

75-70

75-69

75-68

75-67

75-66

75-65

75-64

75-63

75-62

75-61

75-59

75-60

75-58

75-57

75-56

75-55

75-54

75-53

75-52

75-51

75-50

75-49

75-48

75-47

75-46

75-45

75-42

75-44

75-43

75-41

75-40

75-39

75-38

75-37

75-36

75-35

75-34

75-33

75-32

75-31

75-30

75-29

75-28

75-27

75-26

75-25

75-24

75-23

75-22

75-21

75-20

75-19

75-18

75-17

75-16

75-15

75-14

75-13

75-12

75-11

75-10

75-09

75-07

75-06

75-05

75-04

75-03

75-02

75-01