

December 4, 2007 Soil and Water Conservation District's Authority to Levy

Julie Maitland, Director
Agricultural Programs and Resources Division
New Mexico Department of Agriculture
MSC APR / P.O. Box 30005
Las Cruces, NM 88003-8005

Re: Opinion Request - Soil and Water Conservation District's Authority to Levy

Dear Ms. Maitland:

The Soil and Water Conservation Commission ("Commission") requested our advice regarding whether the Hagerman-Dexter Soil and Water Conservation District ("District") acted contrary to the ten-year limit on a district's mill levy authority. According to a letter from former Soil and Water Conservation Commissioner John Greene, "The [District] held a referendum to approve a mill levy in the district in 1988." The letter adds that in 1998 the Commission informed the District of the apparent need "to conduct another referendum before June 16, 1999, if they wished to continue to collect the mill levy. There is no record of such a referendum being held." Yet, "mill levy rate resolutions submitted by [the District] after 1999 continued to be approved by the [Commission]." Based on our examination of the relevant New Mexico constitutional, statutory and case law authorities, and on the information available to us at this time, we conclude that the District's actions were permissible because it collected the levy monies pursuant to a previously-enacted statute.

The New Mexico Soil and Water Conservation District Act, NMSA 1978, Section 73-20-25 to – 48, specifies that a district may, by resolution and referendum, levy an assessment if the district is unable to bear the expense of the duties imposed upon it by the Act. See NMSA 1978, § 73-20-46 (1965, amended through 2003). When the District's mill levy was approved by referendum in 1988, Subsection A of the statute provided that "the supervisors [of a district], by resolution, and the district, by adoption by referendum, may levy an assessment...provided, however, an assessment shall not be levied unless, by July 15 of each year, the resolution of the supervisors has been adopted and approved by a majority of the district landowners voting at the referendum." See 1986 N.M. Laws, ch. 32, § 39. In 1988, the statute did not limit the effectiveness of an annual levy to a specific number of years.

In 1989, Section 73-20-46(A) was amended to require a resolution for an annual levy of a stated period of up to ten years in order to be effective. See 1989 N.M. Laws, ch. 273, § 1. The law was further amended to require a new resolution and referendum to extend the assessment beyond the period originally authorized. Id. (now codified at NMSA 1978, § 73-20-46(A)). In order to be effective, any resolution authorized under Section 73-20-46(A) must be submitted and approved in writing by the Commission. Id. (now codified at NMSA 1978, § 73-20-46(B)). In June of 1996, the Commission passed its own resolution, requiring districts that had existing mill levy authority when the ten-year

limit was imposed by the 1989 statutory amendments to renew their mill levies by referendum by 1999.[1]

As described above, the District has not adopted a resolution to renew the initial mill levy authority authorized in 1988 pursuant to either the 1989 amendments or to the Commission's resolution. Nevertheless, we do not believe that the mill levy is invalid. "New Mexico law presumes that a statute will operate prospectively unless the legislature clearly indicates that the statute is to be given retrospective effect." *City of Albuquerque v. State ex rel. Village of Los Ranchos de Albuquerque*, 111 N.M. 608, 616, 808 P.2d 58, 66 (Ct.App.1991) Citing *Psomas v. Psomas*, 99 N.M. 606, 661 P.2d 884 (1982). The legislature did not apply the requirements imposed under the 1989 amendment of Section 73-20-46 to resolutions providing for annual levies under the previous law. Therefore, a reasonable interpretation of the amendment is that the requirement for resolutions limiting levies to a period of up to ten years applied only to resolutions adopted after the amendment's effective date.

We understand that the District has a 2007 resolution for Commission approval and the District has agreed to abide by the tenets of the current statute. Thus, we expect that the District adhere to the ten-year limit on its mill levy authority. We anticipate that the Commission and the District will work together to follow the appropriate process.

We hope this response is helpful. You have requested a formal opinion on the matters discussed above. Please note that such an opinion is a public document available to the general public. Although we are providing you with our legal advice in the form of a letter instead of an Attorney General's Opinion, we believe this letter is also a public document, not subject to the attorney-client privilege. Therefore, we may provide copies of this letter to the general public. If we may be of further assistance, or if you have any questions regarding this opinion, please let us know.

Sincerely,

TANIA MAESTAS
Assistant Attorney General

cc: Albert J. Lama, Chief Deputy Attorney General

[1] New Mexico has noted that resolutions do not carry the weight of law. See Williams v. City of Tucumcari, 31 N.M. 533, 249 P. 106 (1926).