

## Opinion No. 41-3729

February 25, 1941

**BY:** EDWARD P. CHASE, Attorney General

**TO:** Mr. Herbert Gerhart, Secretary Capitol Addition (or Supreme Court) Building  
Commission Santa Fe, New Mexico

{\*40} This will acknowledge receipt of your letter dated February 15, 1941, in regard to the sewer assessment levied against the Supreme Court Building.

At the outset it is to be noted that this assessment is not a tax within the exemption of state property as set forth in Article VIII, Section 3, of the Constitution. It is a special assessment on a par with other improvement assessments, such as drainage, paving, etc.

The Supreme Court in discussing the fact that special assessments are not exempt under said Section 3 of Article VIII in the case of Lake Arthur Drainage District v. Board of County Commissioners of Chaves County, 29 N.M. 219, at 223, said:

"The very fact that the Constitution declares an exemption from general taxation in favor of public property is a recognition of the principle that, without such express exemption, such property would be subject to taxation along with private property. If it was necessary to make an express exemption in favor of public property from general taxation, surely it was necessary that there should be an express exemption if such property is to be free from special assessments for benefits."

See also annotation in 90 A.L. R. 1137, wherein it is stated by the annotator:

"It is a general rule, to which there are but few exceptions, that a constitutional or statutory exemption from **taxation is to be taken as an exemption from ordinary taxes only**, and does not include special assessments for local improvements."

State property not being exempt from a special assessment, the question narrows down to whether specific legislative authority is necessary to enable a municipality to levy such a special assessment, and, if so, whether that authority exists.

In the Chaves County case above cited, it was held that the statute specifically authorized assessments against public highways, and that by implication the county having charge of such highways was liable therefor. A review of cases from other jurisdictions also indicates that a distinction is made between city and county public property and state property.

Your attention is directed to 90 A.L.R. 1137, Page 1143, where it appears that the cases are unanimous in holding that specific authority must be found in the statutes before special assessments can be made against state property.

In *Lake Arthur Drainage District v. Field*, 27 N.M. 183, state property was involved, and the Court said at Page 188:

**"It might be that it would be beyond the power of local authorities** to make such improvements and assess the cost thereof against the state {*\*41*} property without specific statutory authority, but this point is not in this case and need not be determined because here there is specific statutory authority for the assessment and collection of the same."

In view of the above it seems clear that specific authority must be found in the statute before any kind of assessments can be made against state property.

The assessment here in question was apparently made under the authority of Chapter 154 of the Laws of 1937. That section is broad in that it authorizes the levy of special assessments upon improved and unimproved lots and land adjoining streets and alleys through which sewer pipes are laid, and upon premises and improvements otherwise situated but having sewer connection. It may be said that this general language includes in its description the Supreme Court building, but clearly is not a specific authority to levy against it, as state property, these special assessments in the sense that specific authority was found in the *Field* case above cited, and in the cases cited in the annotation of A. L. R.

Furthermore, it will be noticed that by Subsection 79 of Section 90-402, 1929 Compilation, a lien is authorized against the property to be collected by foreclosure suit in the District Court for said special assessments. If it be held that the lots and land mentioned in Chapter 154 of the Laws of 1937 include state land, then it must follow that liens have been authorized against state land and that suits to foreclose the same against the state may be filed. It is well settled that authority to create a lien against state property, and waiver of immunity from suit, must be specifically and expressly authorized by the legislature, or that it must be implied from language which leaves no other alternative.

In view of the foregoing, it is my opinion that although a grave injustice may be done in casting the cost of sewer maintenance upon the shoulders of private owners to the benefit of the state, said special assessments cannot be imposed without specific authority from the legislature. I, therefore, advise that said sewer maintenance assessment should not be paid unless the Supreme Court should hold that authority to levy same by the City of Santa Fe against state property may be implied from the language above referred to in Chapter 154, Session Laws of 1937, or until the legislature specifically authorizes the payment thereof.