Opinion No. 57-225

September 10, 1957

BY: OPINION OF FRED M. STANDLEY, Attorney General Joel B. Burr, Assistant Attorney General

TO: Mr. Edward M. Hartman, State Finance Director, Department of Finance and Administration, P. O. Box 1359, Santa Fe, New Mexico

QUESTION

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1. Is the Elephant Butte Irrigation District a political subdivision of the State of New Mexico?

2. Can an incorporated village in the State of New Mexico own an undivided interest in a natural gas transmission line which extends beyond five miles from its corporate limits?

CONCLUSIONS

1. Yes.

2. See opinion.

OPINION

ANALYSIS

Question No. 1 was the subject of Attorney General's Opinion No. 57-55, dated March 21, 1957, wherein this office held that Elephant Butte Irrigation District was a political subdivision for the purpose of the Old Age and Survivors Insurance Program.

In that opinion, this office adopted the following definition of political subdivision:

"The term 'political subdivision' is comprehensive and denotes any division of a state made by proper authorities thereof, acting within their constitutional powers, for purposes of carrying out a portion of those functions of state which by long usage and inherent necessities of government have always been regarded as public." (See Commissioner of Internal Revenue v. Shamberg's Estate, 144 F.2d 998.)

Commenting on the above definition, this office concluded as follows:

"As is pointed out in the above quoted definition, organizations may be political subdivisions for certain purposes and yet strictly speaking, not come within the strict

sense of the meaning of this term. However, in New Mexico in view of the fact that New Mexico has a comprehensive water program which clearly makes the water of the State of New Mexico subject to strict State control, and since the Legislature has seen fit to provide for a comprehensive system of control of the use of water, and have developed various agencies for the exercise of the control of the use of water, one being an Irrigation District, we believe that it cannot be doubled that an Irrigation District is carrying out a function of the State of New Mexico"

A reading of § 11-1-10, N.M.S.A., 1953 Compilation, discloses that the Legislature was aware of the purely public nature of an irrigation district inasmuch as it gave the State Comptroller the ". . . power to examine into all financial affairs of every state and county public office or officer, and every state and county institution, bureau, board or commission, whether penal, reformatory, educational or charitable, every charitable institution or hospital for which legislative appropriation is made, every incorporated city, town or village, every municipal, consolidated, union or rural school district, every drainage or **irrigation district,** every building and loan association **and every other office or official or board, bureau, commission or corporation of a purely public nature."** (Emphasis supplied)

That the majority of Courts which have been called upon to decide the question of whether or not irrigation districts are political subdivisions of agencies have come to the conclusion that irrigation districts are generally a corporate organization for a public purpose exercising some governmental purpose, see 94 C.J.S., "Water", § 318, at pages 265 and 266.

The Supreme Court of Colroado, in the case of People v. Letford, 79 P. 2d 274, in answering squarely the question of whether a water district created by an act of the Legislature was an agency of the State, said:

"These circumstances demonstrate, and we conclude, as the language of the act states, that its objects are of sufficient public benefit and advantage to the people of Colorado as a whole to constitute a public purpose and that the water conservancy districts authorized thereby are state agencies and public corporations."

We feel the above authorities persuasive and conclude therefrom that the Elephant Butte Irrigation District, created under the Irrigation Act of 1919, is a political<1> subdivision of the State.

Turning now to question No. 2, § 14-39-32, N.M.S.A., 1953 Compilation, is material and reads as follows:

"Whenever it be declared advisable by the governing body of any municipality, by ordinance duly adopted, incorporated towns or villages are hereby authorized to acquire by purchase, or to construct; and to operate and maintain, either within or without the municipal limits, public utilities for the generation and distribution of electricity or natural gas to persons residing on properties located either within or without such

municipalities, **Provided, however, that no such electric generating plant shall be located and no distribution lines shall extend beyond a distance of five (5) miles from from the limits of such municipality, excepting for the sale of electricity or natural gas to the United States Government, the State of New Mexico, or any department or agency of such governments,** and Provided further that the purchase of any such public utility, or the construction thereof, when such utility is located and such distribution system or any portion thereof, extends or is to be extended, beyond the limits of such municipality, shall be financed only by the issuance and sale of revenue bonds as hereinafter provided." (Emphasis supplied)

The language in the above statute is clear and unambiguous and would allow an incorporated village in the State of New Mexico to own a gas transmission line which extends beyond five miles from its corporate limits if the sale of such gas was to the United States Government, the State of New Mexico, or any department or agency of such governments.

However the Village of Hatch could not own property as a joint tenant although it could own property as a tenant in common with a person or another corporation. To this effect see McQuillin on Municipal Corporations, Second Edition, Vol. 3, § 1225, page 729, where it is said:

"Joint tenancy or tenancy in common. A municipal corporation may hold as tenant in common but not as joint tenant. Thus two corporations, such as a county and city, cannot hold land together as joint tenants, but they may hold as tenants in common, either with themselves or with natural persons. In the creation of a joint tenancy four unities are required, namely, unity of interest, of title, of time and of possession. But the distinguishing incident is a right of survivorship. Two corporations cannot hold as joint tenants, because two of the essential unities are wanting, namely, of the same capacity and title. Moreover, each corporation being perpetual there can be no survivorship between them, nor can a corporation hold lands as joint tenant with a natural person for there is no reciprocity of survivorship between them. But a tenancy in common requires for its existence but one unity, namely, that of possession. If, therefore, a grant should be made to two persons, which, in its terms, should apply to a joint tenancy, but such an estate could not vest for the reason that some of the requisite unities were wanting, the result would be the creation of a tenancy in common. However, under constitutional provisions existing in some states, a municipality is prohibited from becoming the owner of part of a property which is owned and controlled in part by a corporation or individual. And, irrespective of statute, under a charter conferring authority to purchase any estate or estates of any kind, a city cannot purchase an undivided interest in a lot with a building thereon, unless the city is given the right to occupy and use for municipal purposes, so long as it shall own any interest in the fee, a portion, at least, of the property."