Opinion No. 57-260

October 14, 1957

BY: OPINION OF FRED M. STANDLEY, Attorney General Paul L. Billhymer, Assistant Attorney General

TO: Mr. Jack Love, Assistant District Attorney, Fifth Judicial District, Lovington, New Mexico

QUESTION

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Does the Lea County Assessor have the duty of placing the Village of Tatum's special assessments for a sewer frontage tax and a water frontage tax on the tax rolls?

CONCLUSION

No.

OPINION

ANALYSIS

The authority for the assessment for sewers such as was passed by Tatum is found in § 14-40-38, N.M.S.A., 1953 Compilation, reading as follows:

"Municipal corporations having sewers shall have the right by general ordinance to levy annual maintenance or service charges, and 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, either upon the front foot, volume of sewage, or number of outlets basis, such as may be just and reasonable, for the purpose of defraying the expense of maintaining, enlarging, extending constructing, operating and keeping in repair said sewers and a suitable sewage disposal plant, and paying the interest and principal on sewer revenue bonds issued to pay for any such construction, and any such charges shall constitute a lien upon the property so charged, superior to all other liens except general property taxes. Provided, any levy of special assessments on a front-foot basis on unimproved lots or lands shall not exceed fifty (50) per cent of the rate of the rate of assessment levied upon improved lots or land."

It is to be noted that there is no indication from this section as to any method of collection. Note, however, that § 14-40-40, which makes this assessment a lien on the property does provide a method of collection, namely, this tax is "to be collected under the provisions of" § 14-21-53 and § 14-18-9, N.M.S.A., 1953 Compilation.

Section 14-21-53, N.M.S.A., 1953 Compilation, pertains to "Method of assessments for improvements -- Payment -- Lien -- Enforcement -- Procedure", and collection is to be made as follows:

". . . Such charges may be collected and such lien enforced by a proceeding in law or in equity in the district court of the proper county, either in the name of such corporation, or of any person to whom it shall have directed payment to be made, . . . Proceedings may be instituted against all owners, or any of them, to enforce the lien against all the lots or land, on each lot or parcel, or any number of them, embraced in any one assessment; but the judgment or decree shall be separately for the amount properly chargeable to each. Any proceedings may be served in the discretion of the court for the purpose of trial, review or appeal."

It is evident that the Legislature intended that sewage frontage tax was to be collected in this method, therefore, we conclude that such assessment should not be placed on the tax rolls of the county by the county assessor.

The water frontage assessment is assessed under the authority of § 14-21-57 and § 14-39-2, each of which reads as follows:

"To levy annually by ordinance and collect a frontage tax on all lots fronting on water mains in towns or cities having water-works owned by such towns or cities."

"All cities and incorporated towns constructing water, gas or electric light works are authorized to assess from time to time, in such manner as they shall deem equitable, upon each tenement or other place supplied with water, gas or electric lights, such water, gas or electric light rents as may be agreed upon by the council or trustees, or upon each vacant lot in front of which the pipes commonly called 'street mains' are laid, but such vacant lots as do not take water from such street mains shall not be assessed more than one-half as much as may be assessed against the same amount of frontage of lots occupied by a one-story building; and gas should be charged for by the foot and electric lights by ampere and then only to such as use it, and at the regular time for levying taxes in each year, said city or town is hereby empowered to levy and cause to be collected, in addition to the other taxes authorized to be levied, a special tax on taxable property in said city or town, which tax, with the water, gas or electric light rent hereby authorized, shall be sufficient to pay the expenses of running, repairing and operating such works. . . ."

Section 14-21-57 provides for the frontage assessment for water mains. Section 14-39-2 seems to provide for a water main frontage assessment and, in addition, provides for a special levy of taxes on taxable property for operation of such municipally owned utility, however, neither of these sections provide that such assessments should be collected by the county treasurer from the tax rolls.

We believe that the water main frontage assessment is distinct from the tax levy and that there is no provision for the placing of this assessment upon the tax rolls by the

county assessor. The village will have to collect its own special assessment within the aid of the county assessor's and treasurer's offices.

We believe that no other conclusion can be reached on this question. The only taxes that a village can have placed on the tax rolls are those certified under the provisions of § 72-4-2, N.M.S.A., 1953 Compilation, and this does not include special assessments such as the sewer and water frontage assessments.

In view of the answer to your first question, we do not deem it necessary to answer the other questions contained in the request.