

## Opinion No. 60-81

May 4, 1960

**BY:** OPINION of HILTON A. DICKSON, JR., Attorney General

**TO:** Martin A. Threet Attorney at Law First National Bank Building Albuquerque, New Mexico

### QUESTION

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May the State Tax Commission grant easements for public purposes over tax deeded lands to the Middle Rio Grande Conservancy District?

#### CONCLUSION

Yes.

### OPINION

#### {\*441} ANALYSIS

In your capacity as attorney for the Middle Rio Grande Conservancy District, a municipal corporation of the State of New Mexico, you have requested our opinion on the above question. You advise the Conservancy District, in carrying out its program of rehabilitation of the District works through contract with the United States Department of the Interior, Bureau of Reclamation, needs easements for expansion of the canals and drainage works over lands, the title to which is in the State of New Mexico because of tax deeds. There has arisen the question of whether the Tax Commission may issue an easement over such properties for such purposes without complying with the usual requirements relative to advertising.

A Conservancy District organized pursuant to Article 28 of Chapter 75 of the New Mexico Statutes Annotated, 1953 Compilation, is a political subdivision of the State of New Mexico and a body corporate with all the powers of a public or municipal corporation. Section 75-28-9.

{\*442} In view of this status of the District, § 72-8-51, N.M.S.A., 1953 Compilation, is brought into focus. This statute reads as follows:

"The state tax commission of the state of New Mexico is authorized and empowered to sell to any municipality in the state of New Mexico any lots or blocks of ground within the corporate limits of such municipality, which may belong to the state of New Mexico by virtue of tax deeds from the several county treasurers in this state, at such nominal

sum as may be agreed upon, such lands to be used by such municipality for public purposes only, and not for resale."

It becomes self-evident that the above statute authorizes the Tax Commission to sell to any municipality any lot or block of ground within the corporate limits of the municipality belonging to the State by virtue of tax deeds if such lands are to be used by the municipality for public purposes only. Thus, four criteria must be met to invoke the authority of this section. 1. The purchaser must be a municipality. 2. The desired land must be within the corporate limits of the municipality. 3. The said land must belong to the State by virtue of tax deeds. 4. It must be used for public purposes only.

The first criterion is met by § 75-28-9 (2), supra. The second qualification is one of factual determination, but in this instance would have to fall within the exterior boundaries of the Middle Rio Grande Conservancy District. The third is again a matter of determination by examination of the records on file in the Tax Commission office. The fourth and last is that the purchase must be for a public purpose. It appears and is in fact by statute declared a public purpose for the District to construct, operate and maintain canals, laterals and drains.

Therefore, it appears that the Middle Rio Grande Conservancy District would fall within the class permitted to purchase such lands under § 72-8-51.

It will be noted that the State Tax Commission is empowered to sell lots or blocks of ground situated within the corporate limits of the municipality. It is our opinion that with the power to sell the whole it becomes a correlative right to sell a lesser interest in accordance with the statute. Therefore, we are of the opinion that the Tax Commission may sell a lesser estate, that is, an easement interest in and to, over and across the tax deeded premises so long as this interest is all that is needed by the municipality to serve the public purpose.

The only question remaining is whether this statute authorizes the Commission to sell without following the usual procedural requirements relating to advertisement and bids. The purpose of the statute would be defeated if the usual requirements were to be a qualification of the procedures. It becomes self-evident that the purpose of the statute was to enable municipalities to acquire tax deeded premises for public purposes without requiring it to bid against other prospective purchasers. This becomes clear when one recognizes that the Tax Commission may sell the premises to the municipality concerned "**at such nominal sum as may be agreed upon.**" Thus, it is our opinion that the advertisement and bidding procedures need not be followed.

By: Thomas O. Olson

Assistant Attorney General