Opinion No. 99.

Rural Improvement Districts—County Commissioner—Improvement Districts, Rural—Districts, Rural Improvement—Water Systems, District.

Held: The board of county commissioners has not the power or authority to authorize one rural improvement district to permit the use of its facilities by another rural improvement district and the two cannot enter

into a contract to use the mains, pumps and reservoirs of an existing water system of one district for the benefit of both districts, nor can I find wherein the board of county commissioners would have any jurisdiction in the matter.

November 27, 1945.

Mr. Melvin N. Hoiness
County Attorney
Yellowstone County
Billings, Montana

Dear Mr. Hoiness:

You have requested my opinion concerning a petition to the board of county commissioners of your county executed by real property owners in Rural Improvement District No. 63, which requests permission for District No. 63 to connect their water mains with those of District No. 25. The petition recites in part:

> "Realizing that the property owners in Rural Improvement District No. 25 have been, will be, and are being, assessed for pumping equipment and reservoir, construction, as well as primary mains, by means of which water can be made available to the undersigned property owners and which could not be made available by any other practical means, the undersigned property owners agree that they are willing and desirous to be assessed proportionately on an acreage or other statutory basis, for all maintenance and/or construction charges for the year 1946 and all succeeding years that may be found necessary to be levied against said Rural Improvement District No. 25."

The proposed plan to connect the mains of District No. 63 to those of District No. 25 would result in the use of the facilities of District No. 25 by District No. 63. The above quoted portion of the petition suggests that additional construction on the facilities of District No. 25 might be necessary to furnish the water for District No. 63. This would mean that the assessment for District No. 25 would be in part for District No. 63. Our Supreme Court in State ex rel. Malott v. Board of County Commissioners, 89 Mont. 37, 296 Pac. 1, considered special assessments on irrigation districts, and said:

> "A tax is levied for the general public good, and without special regard to the benefit conferred upon the individual or property subject thereto, while a special assessment is levied to force payment for a benefit equal in value to the amount thereof. The latter (assessment) is not a tax of all the property within a district for general purposes, founded upon the benefits supposed to be derived from the organization of a government, but is a charge upon specific property for a specific purpose, founded upon benefit supposed to be derived by the property itself."

It is apparent that an additional assessment on the property in District No. 25 for the purpose of increasing the facilities so that additional water may be supplied for District No. 63 will not be of benefit to the property owners of District No. 25. The petition provides that owners of District No. 63 will be assessed proportionately for all maintenance and construction charges that may be levied against District No. 25, and as a consequence no greater burden will be placed upon the owners of District No. 25, provided the assessments are paid by the owners in District No. 63.

If the plan proposed in the petition constitutes a merger of the two districts, then statutory authority and jurisdiction for the commissioners must be found. In Lewis v. Petroleum County, 92 Mont. 563, 17 Pac. (2d) 60, the court stated the rule:

> "The principle is well established that the board of county commissioners may exercise only such powers as are expressly conferred upon it or which are necessarily implied from those expressed, and that where there is a reasonable doubt as to the existence of a particular power in the board of county commissioners, it must be resolved against the board, and the power denied."

Sections 4574—4603, inclusive, Revised Codes of Montana, 1935, as amended, provide for the creation and regulation of rural improvement districts and there is no statutory author-

ity for the merger in fact or merger to create a new legal entity by two districts. Also there is no authority for one district to make its facilities available to another district.

In 67 Corpus Juris 1220, the text states:

> "A municipality, supplying water as a public utility beyond its boundaries, must be authorized to do so. The general power of a municipality to provide a water supply for its inhabitants does not include the right to furnish water to the inhabitants of other municipalities."

The foregoing states a principle that is applicable here as the situation is closely analogous. In other words, the legislature has authorized the creation of rural improvement districts, but has made no provision for the merger of two districts nor has it granted the authority for one district to permit the use of its facilities by another district although the use of the facilities would be compensated for.

It is therefore my opinion that the board of county commissioners has not the power or authority to authorize one rural improvement district to permit the use of its facilities by another improvement district and the two cannot enter into a contract to use the mains, pumps and reservoirs of an exisiting water system of one district for the benefit of both districts. Nor can I find wherein the board of county commissioners would have any jurisdiction in the matter.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General