

Irrigation Districts—State—Subdivisions of State—Employees.

Employees of irrigation districts are not employees of a subdivision of the state.

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My dear Mr. Rasmussen:

You have requested an opinion of this office regarding the employees of an irrigation district and as to whether such employees are employees of a subdivision of the state of Montana.

Our supreme court has recently had before it in two cases the question of whether an irrigation district is a subdivision of the state of Montana.

In the first case (Crow Creek Irr. Dist. vs. Crittenden, 227 Pac. 63) the question arose by reason of a claim of exemption on the part of the district from the payment of fees to the clerk and recorder in recording certain instruments by reason of the provisions of section 4893 of our code, which read as follows:

"No fees must be charged the state, or any county, or any subdivision thereof, or any public officer acting therefor, or in habeas corpus proceedings for official services rendered, and all such services must be performed without the payment of fees."

In this case the court, after reviewing many cases in which it has been held by various courts that similar organizations were or were not sub-divisions of the state, said:

"To summarize: An irrigation district is a public corporation organized for the government of a portion of the state and for the promotion of the public welfare. It exercises essential governmental functions, and one of its principal officers is the county treasurer. It may not expend its funds without the approval of public officers, and the interest on its bonds is not subject to the federal income tax laws. (Citing cumulative bulletin No. 2, 93.) So far as it was possible to do so the legislature has emphasized its public character and expressed an intention that it shall be relieved of the ordinary burdens which are imposed upon private enterprises. From these considerations we think it is fairly deducible that it was the purpose of the legislature that an irrigation district *should be deemed a subdivision of the state within the meaning of section 4893, revised codes.*"

In the second case (Thaanum vs. Bynum Irr. Dist. 232 Pac. 529) the question presented to the court was whether an irrigation district is a subdivision of the state within the meaning of section 1 of article XIII of our constitution. The court concluded that it is not.

Analyzing these two decisions, it appears that the supreme court has recently held that an irrigation district is a subdivision of the state within a statutory provision exempting from fees any subdivision thereof, but that it is not a subdivision of the state within a constitutional provision which includes, with counties, cities, towns and municipalities, "other subdivisions of the state," for the reason, as the court here said, that "other subdivisions" mean other similar subdivisions and that an irrigation district "is lacking in practically every essential element which gives character to any of the enumerated public corporations."

Under the interpretation of an "irrigation district," as construed in these cases, it is difficult to say what the supreme court would hold as to whether employees of irrigation districts are employees of a subdivision of the state. I am inclined to the opinion that they are not.

Very truly yours,

L. A. FOOT,
Attorney General.