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April 18, 2017

The Honorable Robert F. Ferguson
Washington State Attorney General
P.O. Box 40100
Olympia, WA 98504-0100

RE: Request for formal Attorney General Opinion
Mosquito Control District Assessments on State Highway Lands

Dear Attorney General Ferguson:

I am writing to respectfully request an opinion regarding the authority of mosquito control districts to levy assessments on state owned property.

Background.

The County Assessor is required to notify property owners of changes in assessed value of all property in all taxing or assessing districts in the county, including special purpose districts such as those listed in RCW 79.44.003. The Assessor does not impose the assessments. The assessments are imposed by the taxing districts. The Treasurer sends the parcel owner the notice of the amount due for all taxes and assessments for all taxing districts in the county, including the special purpose districts.

Mosquito Control Districts are one of those taxing districts. Although the County Prosecutor does not represent any of the mosquito control districts, the County Assessor certifies to the mosquito control board the assessed value of property in a district, and the County Treasurer collects and distributes the taxes and assessments collected for a district. Therefore, my office needs clarification of the interplay of the statutes governing assessments by special purpose districts, such a Mosquito Control Districts.

The authority of mosquito control districts to make assessments is granted by the following statutes.

RCW 17.28.255 Classification of property—Assessments.

The board of trustees shall annually determine the amount of money necessary to carry on the operations of the district and shall classify the property therein in proportion to the benefits to be derived from the operations of the district and in accordance with such classification shall apportion and assess the several lots, blocks, tracts, and parcels of land or other property within the district, which assessment shall be collected with the general taxes of the county or counties. A mosquito control district must use the assessed value applicable to forestland, farm and agricultural land, or open space land, under chapter 84.33 or 84.34 RCW, when the land has been designated as such and the assessed value is used as a component in determining the district assessment. If a district uses a fractional amount of assessed value as a component in determining the district assessment, then a fractional amount of the value applicable to forestland, farm and agricultural land, or open space land, under chapter 84.33 or 84.34 RCW, shall be used.

RCW 17.28.258 County treasurer—Duties.

The county treasurer shall collect all mosquito control district assessments, and the duties and responsibilities herein imposed upon him or her shall be among the duties and responsibilities of his or her office for which his or her bond is given as county treasurer. The collection and disposition of revenue from such assessments and the depository thereof shall be the same as for tax revenues of such districts as provided in RCW 17.28.270.

RCW 17.28.270 Collection, disposition, of revenue—Depository.

All taxes levied under this chapter shall be computed and entered on the county assessment roll and collected at the same time and in the same manner as other county taxes. When collected, the taxes shall be paid into the county treasury for the use of the district.

If the district is in more than one county the treasury of the county in which the district is organized is the depository of all funds of the district.

The treasurers of the other counties shall, at any time, not oftener than twice each year, upon the order of the district board settle with the district board and pay over to the treasurer of the county where the district is organized all money in their possession belonging to the district. The last named treasurer shall give a receipt for the money and place it to the credit of the district.

RCW 17.28.310 Annual certification of assessed valuation.

It shall be the duty of the assessor of each county lying wholly or partially within the district to certify annually to the board the aggregate assessed valuation of all taxable property in his or her county situated in any mosquito control district as the same appears from the last assessment roll of his or her county.

Washington law provides that state lands are subject to assessments under certain conditions:

RCW 79.44.010 Lands subject to local assessments.

All lands, including school lands, granted lands, escheated lands, or other lands, held or owned by the state of Washington in fee simple (in trust or otherwise), situated within the limits of any assessing district in this state, may be assessed and charged for the cost of local or other improvements specially benefiting such lands which may be ordered by the proper authorities of any such assessing district and may be assessed by any irrigation district to the same extent as private lands within the district are assessed: PROVIDED, That the leasehold, contractual, or possessory interest of any person, firm, association, or private or municipal corporation in any such lands shall be charged and assessed in the proportional amount such leasehold, contractual, or possessory interest is benefited: PROVIDED, FURTHER, That no lands of the state shall be included within an irrigation district except as provided in RCW 87.03.025 and 89.12.090.

[1982 1st ex.s. c 21 § 178; 1963 c 20 § 2; 1919 c 164 § 1; RRS § 8125. Cf. 1909 c 154 §§ 1, 4.]

RCW 79.44.010 provides that state property must be “specially benefited”. Whether property has been ‘specially benefited’ by local improvement is a question of fact. *Appeal of State*, 60 Wn. 2d 380, 382, 374 P.2d 171, 173 (1962); *In re Jones*, 52 Wn.2d 143, 146, 324 P.2d 259 (1958); *Hargreaves v. Mukilteo Water Dist.*, 43 Wn.2d 326, 333, 261 P.2d 122 (1953).

Washington State Department of Transportation (WSDOT) property lies within the mosquito control districts located in Walla Walla County. Chapter 17.28 is not made expressly applicable to lands of the state.¹ The mosquito control districts may argue, however, the existence of a rather significant special benefit to the State’s property in controlling mosquitos.² There has been a report that the West Nile virus has been identified in mosquitos and infected a man in Walla Walla County in 2016. Any WSDOT worker might concede that they are benefited when they don’t get bit by a mosquito and contract the West Nile virus while working on highway projects. Any member of the public traveling on the public highways would also feel there is a benefit from not being

¹ Some special districts are specifically authorized to assess state highway lands. “All lands under the jurisdiction of the Department of Highways which are situated within any incorporated city, town, diking, drainage or port district may be assessed by the authorities of such districts, for improvements specially benefiting such lands, under authority of chapter 58, Laws of 1953. If the commission finds that such assessments are payable it may, in its discretion, order the same paid from the motor vehicle fund.” AGO 1953-55 NO. 176 (1953)

² **RCW 17.28.254 Abatement, extermination declared necessity and benefit to land.**

It is hereby declared that whenever the public necessity or welfare has required the formation of a mosquito control district, the abatement or extermination of mosquitoes within the district is of direct, economic benefit to the land located within such district and is necessary for the protection of the public health, safety and welfare of those residing therein.

infected by the virus. The Zika virus is also spread by mosquitos, but it has not yet been identified in Walla Walla County. Since SR12, SR124 and SR730 go over or adjoin Lake Wallula, the Columbia River, the Snake River, the Walla Walla River, Casey Pond, and all of the irrigated farms in the western part of Walla Walla County, there may be an identifiable benefit to State property by controlling mosquitos.³ This benefit analysis may quite possibly be applicable to all of the mosquito control districts in the state.

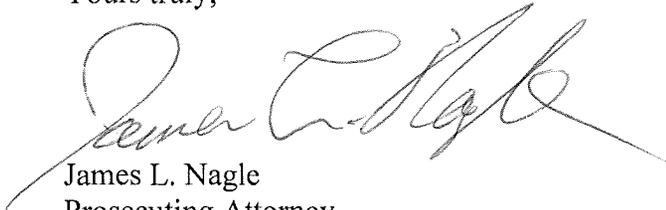
Question Presented.

It is anticipated that an answer to the following question by your good office would, in my opinion, help us in advising our county officials.

1. Is Washington State Department of Transportation property subject to assessments for mosquito control districts?

Please do not hesitate to contact me if you have additional questions or if I can provide additional information. I look forward to your response.

Yours truly,



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³ "The function of the mosquito control districts is to eliminate mosquitoes and mosquito breeding areas. RCW 17.28.160. Like removing noxious weeds, this provides a special benefit to the specific property of landowners within their districts. The Districts' assessments are indeed special assessments." *Benton Cty. Mosquito Control Dist. No. 1 v. Yakima Cty.*, 88 Wash. App. 1049 (1997)