

Opinion No. 50-5296

May 17, 1950

BY: JOE L. MARTINEZ, Attorney General

TO: Honorable Paul Tackett District Attorney Albuquerque, New Mexico

{*149} I am writing in reply to your letter of April 24, 1950 regarding Chapter 146 of the Session Laws of 1949.

The figures obtained by Dee Donnell and Associates are to be furnished the assessor and taxing officials of the county and such officials have "the mandatory duty of using the equalized values obtained from said survey in the respective counties as a **basis** for valuation and equalization of the property to be valued and assessed."

The Dee Donnell figures are to be used as a **basis**. Of necessity this creates certain ambiguity. The ambiguity can be avoided only by the understanding that the purpose of the act is the equalization of values throughout the state. The assessor and the county commissioners, acting as a board of equalization, have a certain amount of discretion. The discretion they display is subject to later review by the State Tax Commission and the State Tax Commission is vested with the authority to equalize the values in the various counties where in its opinion there is a sufficient disparity to believe that the use of the Dee Donnell figures as a "basis" has been circumvented or thwarted.

You next ask whether it is necessary that the survey shall have been completed for all counties of the state before reassessments shall be entered on the rolls. Section 1 of Chapter 146 provides that "the county assessors and county commissioners shall have the mandatory duty in the year 1950 {*150} and thereafter to use the equalized values obtained from said survey as a basis for valuation and equalization of property to be valued and assessed by county taxing officials". In this provision the Legislature has shown its clear and unequivocal intention that the new values be placed in effect in 1950.

The Legislature, however, realized that the valuations for some conceivable reason might not be completed in time to be put in effect uniformly throughout the state. It therefore provided:

"Section 6. No assessment shall be made in any county based upon surveys provided for by this act, or heretofore made under the provisions of Chapter 208 of the Session Laws of 1947, until the surveys by this act provided for shall have been completed in all counties of the state, so that assessments in all counties based upon re-surveys, shall be made in the same year."

At the present time, it appears that all the valuations will be completed by June 1, and there appears to be no reason why each of the county assessors should not commence

reassessing the properties. To allow each county to sit back until the entire survey is completed would be to place substantial administrative burdens on them and potentially prevent the accomplishment of the purpose of this act. There is attached hereto an affidavit of Dee Donnell that the field work connected with the survey has been entirely completed. The only remaining problem is the compilation of the data for submission to each of the assessors. All of this will be accomplished prior to July 1, 1950. There is also attached hereto an affidavit from Harrold B. Sellers, Head of the Tax Commission, stating that from an administrative point of view, the new values can be placed on the tax rolls this year.

It is the further understanding of this office from conversations with Mr. Brunacini, County Manager for Bernalillo County, that the county has ordered machines which can complete the preparation of a new tax assessment within thirty days and that the business machines company will furnish the necessary personnel and supervision for the operation of the machines.

The Donnell Survey has been completed in Bernalillo County and the figures submitted to the county assessor, but he has taken the arbitrary position that he will not accept or use them. Other counties are now taking the same position. In order that there will be no misunderstanding of the position that will be taken by both this office and the State Tax Commission, I wish to point out the following provision of Chapter 146:

"The tax commission and the state comptroller, jointly or severally, shall enforce compliance with such duty to use said reassessment on the part of local assembly officers. Failure or refusal to comply with the mandate herein contained shall constitute grounds for removal or suspension from office of such local officers."

If the county assessor of Bernalillo and any counties believe that they can wilfully refuse to carry out the legislative mandate, then there is no course but to take the necessary action to effect their immediate removal or to file a writ of mandamus to compel them to act. It should be pointed out that there are certain substantial economic factors involved. The state is spending \$ 650,000 for the costs of the survey. Secondly, by way of illustration, the assessed valuation in Bernalillo County will be increased from approximately \$ 50,000,000 to \$ 96,000,000, and the additional revenue is sorely needed. I am sending a copy of this letter to the assessors in Bernalillo {*151} and Sandoval counties and am requesting that you personally contact them to determine their attitude. If they persist in the position they have taken, immediate action will be taken.

You further ask whether the act is constitutional. It is the primary responsibility of this office to uphold all legislation properly enacted. We are, therefore, in no position to express an opinion other than that the act is constitutional.