

Opinion No. 52-5606

October 15, 1952

BY: JOE L. MARTINEZ, Attorney General

TO: Chief Tax Commissioner Mr. Melvin Yost State Tax Commission Santa Fe, New Mexico

{*318} Recently you requested an opinion from this office as to whether the State Tax Commission must add items to a county budget submitted by a fifth class county, which budget does not include allowances for deputies for county officials.

It appears that the budget estimate submitted by the county in question includes only essential items, necessary for the operation of the county and to carry out the functions provided by law. It appears further that the budget estimate submitted equals all the anticipated revenue of the county for the fiscal year ending June 30, 1953, and it appears further that if the Tax Commission adds items to provide for the deputies of county officials, the total budgeted amount for the county would exceed the proceeds from a five-mill tax levy and {*319} other estimated sources of revenue for the county.

Section 15-4103 NMSA fixes the salaries of county officials for all classes of counties. The statute permits the payment of additional salaries for deputies. It does not command that deputies be employed and permits the payments of those salaries only if they are actually employed and performing services.

The preparation of revenue estimates is delegated to the county commissioners by virtue of the provisions of Sec. 15-4801 et seq., NMSA. This statute requires the Tax Commission to consider such estimates and it may hold public hearings in connection therewith. It is not mandatory that the Tax Commission hold such public hearings if it decides against such course of procedure. It is my understanding that the commission does in fact hold such hearings and did in fact in connection with the budget under consideration.

Section 76-525 NMSA gives the State Tax Commission power to require counties to file budgets with it in the form required by the commission. The Tax Commission is given the power to amend, revise, correct and approve such budgets. It is my opinion that this grant of power does not require the Tax Commission to include items within the budget not requested by the county officials, unless such items would be items required by law, such as the payment of salaries of duly elected public officials, etc. The payment of salaries of deputies is not an item required by law to be paid unless such deputies are employed and perform the services.

It is my opinion that the Tax Commission has the right to act upon the budget estimate as submitted by the county authorities in question. No duty is imposed upon the Tax

Commission to include items not included by the county commissioners unless these items are required by law.

If the county officials have any quarrel with this view may it be noted that their quarrel is with their county commissioners, not with the Tax Commission.

In passing, may I state that it seems to be apparent from the inquiry that the county in question cannot budget all items requested of it and stay within the five-mill limitation. It has been rumored that other counties find themselves perilously close to this situation.

The State Tax Commission is not charged by law with the responsibility of finding revenues for hardpressed counties where no revenues exist. Its job is to approve budgets that comply with the requirements of law, not to find the revenues that are needed.

The matter of providing relief to the counties which are handicapped in meeting fiscal requirements by lack of expected revenues, is something which should be brought to the attention of the Legislature.

I trust this fully answers your inquiry.