

## Opinion No. 55-6076

January 14, 1955

**BY:** RICHARD H. ROBINSON, Attorney General

**TO:** Mr. D. D. Monroe Acting Chief Tax Commissioner State Tax Commission, Santa Fe, New Mexico

In your letter dated January 7, 1955, you refer to Chapter 83, Laws of 1953, and Chapter 117, Laws of 1953, pertaining to the classification of counties and request an opinion concerning the conflict in these two laws and as to which law is controlling.

Chapter 83, Laws of 1953, was approved on March 19, 1953, but became effective on the same date as Chapter 117. Chapter 83 provides that the State Tax Commission shall classify counties based upon the assessed valuation fixed for the preceding year and shall notify the county commissioners thereof, and such classification shall govern the salaries for the ensuing two years.

Chapter 117, Section 2, Laws of 1953, provides that the State Auditor shall determine the classification of each county based upon the assessed valuation fixed for the preceding year and shall notify the board of county commissioners thereof, and such classification shall govern the salaries of county officers for the ensuing two years. Chapter 117 was approved March 20, 1953, but did not carry the emergency clause and, therefore, became effective on the same day as Chapter 83.

Where two statutes are inconsistent and are passed by the same session of the legislature and both become effective at the same time the Supreme Court has held that the law being last in place, position or sequence will govern and repeal by implication the earlier statute. **Board of County Commissioners of Socorro County v. Leavitt**, 4 N.M. (Gild.) 37, 12 P. 759; **State v. Montiel**, 56 N.M. 181, 241 P. 2d 844. In the latter case, the Court stated the rule in this language:

"This case comes within the familiar rule that where two inconsistent, irreconcilable or repugnant statutes, relating to the same subject-matter, are enacted by the legislature at the same session and are approved the same day, that which is last in place or position, as determined by sequence, is presumed to be the last in time and prevails over that which is first in place and sequence."

It is thus apparent that Section 2, Chapter 117, Laws of 1953, is the controlling statute and repealed by implication Chapter 83, Laws of 1953, regarding the matter of classification of counties and the duty to perform such function falls upon the State Auditor.

By

C. C. McCulloh

Assistant Attorney General