

## Opinion No. 55-6276

September 7, 1955

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

**TO:** Mr. Phil R. Lucero, Tax Commission Attorney, State Tax Commission, Santa Fe, New Mexico

You have requested the opinion of this office on two questions submitted to you by the New Mexico Tax Payers' Association, which are as follows:

"Chapter 288 and 289, Laws of 1955, are identical, except that 288 has additional language setting classifications for Class "C" counties and salaries for these officers. Since the passage of Chapter 289 and the signing by the Governor added nothing to the laws, it would seem that the only purpose for passing it would be to nullify the Class "C" classification. The question is, have Class "C" counties actually been created, or were they nullified by the passage of Chapter 289?"

In both Chapter 288 and 289, the salary of the sheriffs in second class counties depends upon whether a second class county borders on a 'foreign county'. What is a 'foreign county,' and which counties are eligible for the additional salaries?"

A close study of the two acts indicates that they are not identical, as above stated, in that Chapter 289 also corrects a clerical error made in Chapter 288 whereby "A" Class counties might have been deprived of extra deputies provided where a certain number of tax schedules are filed. This error does not, however, change the basic question of whether or not Chapter 289 repeals, by implication, Chapter 288.

With respect to repeals by implication of acts passed at the same session of the legislature, it is said in 82 C.J.S., Statutes, § 297:

"The principle that a repeal by implication is not favored by law, discussed supra § 288, is especially applicable as between two statutes passed at the same session of the legislature. Also, where two acts relating to the same subject matter are passed at the same legislative session, there is a strong presumption against implied repeal, and they are to be construed together, if possible, so as to reconcile them and, likewise, they are to be construed together to give effect to each, and thereby avoid an implied repeal, rather than to infer that one destroys the other; . . ."

The only possible inconsistency between the two statutes is that Chapter 289 does not contain a provision for Class "C" counties while Chapter 288 does. The titles of the two acts are identical except that Chapter 288 in addition to stating that it is "creating a new Class "B" County" also states that it is "creating a new Class "C" County".

Inasmuch as the record shows that both of these acts were passed during the closing days of the last Legislature, we cannot say that it was not the legislative intent to provide for the creation of a Class "B" County in any event and to leave to the Governor the question of whether a Class "C" County should likewise be created. It would have been a simple matter, absent the clerical mistake above mentioned, for the Governor to have signed the bill creating both a Class "B" and Class "C" County and vetoed the other. However, inasmuch as to have signed this bill only would have left the clerical error in existence, it was also necessary to sign Chapter 289.

In view of the presumption against repeals by implication, as above quoted, and in view of the fact that a logical explanation for the existence of both acts and the reading of them together can be maintained, it is the opinion of this office that both of said acts are in force and effect and the two should be read together, leaving both Class "B" and Class "C" Counties created, and correcting the clerical error evident in Chapter 288.

Your second question, as above stated, concerns the meaning to be given the phrase "foreign county" as it relates to salaries of sheriffs.

This provision, as it existed prior to the passage of the two acts of the 1955 Legislature, referred to "foreign country". It is rather obvious, we believe, that the change was due to a clerical error in typing the word "country". This contention is strengthened when the original bill is examined and it is noted that the word "county" is not underlined as is required by House Rule whenever the original enactment is changed by amendment. In a somewhat similar situation, the Supreme Court of New Mexico in *Continental Oil Company v. City of Santa Fe*, 36 N.M. 343, 15 P. 2d 667, held the word "certain" to mean "cities". We believe that, based on the authority of that case, the word "county", as used in Chapters 288 and 289, Laws of 1955, may be interpreted to mean "country".

Further, the phrase "foreign county" may be interpreted as easily to mean a political subdivision of a foreign country as a political subdivision of an adjoining state. The term "foreign" is not often used to indicate a neighboring state of the United States.

Therefore, under either interpretation, only sheriffs of counties bordering upon the Republic of Mexico would be entitled to the additional compensation provided in these chapters.

By Walter R. Kegel

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