

Opinion No. 56-6467

June 13, 1956

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. Anderson Carter, Chairman, Interim Joint Committee, Public Finance Study Committee, P. O. Box 1651, Santa Fe, New Mexico

We have your letter of June 4th requesting an opinion from this office upon the following question:

"Does the State Tax Commission presently have the power legally to suspend or take over the duties of county assessors?"

The answer to your question is found in Section 15-38-3, N.M.S.A., 1953 Compilation, (Pocket Supplement) the same being Chapter 176, Laws of 1955, which reads as follows:

"Whenever any county assessor shall wilfully fail or refuse to perform any duty imposed upon him by law, the commission shall have the power to suspend the assessor, provided that he shall have ten (10) days' written notice of such proposed suspension and shall be entitled to a hearing before the commission, upon which a written order shall be made by the commission. The suspension may continue for such period of time as may be necessary to correct the violation of the statute involved and until the suspended assessor has made a showing satisfactory to the commission that he is able and willing to conduct his office in the proper manner. The assessor shall not be entitled to salary or other compensation for and during the period of suspension."

It can be seen that the State Tax Commission is authorized to suspend a County Assessor at any time such County Assessor wilfully fails or refuses to perform any duty imposed upon him by law, upon the giving of a ten days' notice, and also having a hearing before the State Tax Commission on the charge of wilful failure or refusal to perform any of the Assessor's legal duties.

It should be further noted that the suspension is to continue for such period of time as may be necessary to correct the violation of the statute involved, and until the suspended assessor makes a satisfactory showing to the Commission that he will and is able to conduct his office in a proper manner.

Section 15-38-5, N.M.S.A., 1953 Compilation, reading as follows;

"Whenever any assessor is suspended by the commission, the commission shall designate a competent person to perform the duties of the assessor during the period of suspension, and who shall be subject to the control and supervision of the commission. The person so designated shall, prior to assuming the duties of that office, file bond in

the manner and amount required by law of the assessor, for and during the period of suspension. He shall be compensated for his services from any available county funds budgeted for the assessor's salary and office, and, if they shall not be sufficient, from any available funds of the commission."

makes provisions for the State Tax Commission to designate a substitute for such suspended county assessor. The statute is very clear as to what the grounds should be for such removal, namely, wilfully failing or refusing to perform any duty imposed upon him by law. Therefore any time the State Tax Commission can establish that a county assessor wilfully fails or refuses to carry out any of the provisions of the law relative to the duties of a county assessor the Tax Commission can follow the procedure set forth in the statute to suspend such assessor and correct such violation by placing the substitute assessor in such office.

It can readily be seen that the State Tax Commission has been given broad powers in order to supervise the county assessors in the State of New Mexico.

Trusting we have answered your question, we remain

By: Paul L. Billhymer

Assistant Attorney General