

Opinion No. 56-6523

September 28, 1956

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. C. L. Forsling, Chief, State Tax Commissioner, State Tax Commission, Santa Fe, New Mexico

In your letter of September 18, 1956, you state that the State Tax Commission has been requested to require the Commissioners of San Juan County to levy a tax of not over 5 mills under the provisions of Section 73-7-22, N.M.S.A., 1953 Compilation. The above mentioned section provides that the proceeds from such a levy are to be expended under the direction of the State Tax Commission for the construction and equipment of new buildings for school purposes in an emergency situation.

You point out that other levies for state, county and local purposes in San Juan County have reached 20 mills, and that the levy requested would, of necessity, be outside and above the 20 mills levied for regular governmental purposes.

You ask whether the 20 mill limitation amendment prohibits the State Tax Commission from requiring the levy above mentioned.

The amendment to which you refer is Article 8, Section 2, which provides in part as follows:

". . . Provided, however, that taxes levied upon real or personal tangible property for all purposes, except special levies on specific classes of property and except necessary levies for public debt, shall not exceed twenty mills annually on each dollar of the assessed valuation thereof, but laws may be passed authorizing additional taxes to be levied outside of such limitation when approved by at least a majority of the electors of the taxing district voting on such proposition."

In 84 C.J.S. "Taxation", pages 154, 155, we find the following:

"Constitutional limitations on the rate or amount of taxes which may be levied render illegal and void taxes imposed in excess of the limitation; but, in the absence of such a constitutional restriction, property may be taxed without limitation as to rate or amount and excessiveness alone will not vitiate an otherwise lawful tax. . . .

"On the other hand, a constitutional limitation on the rate or amount of taxes which may be levied in any one year has been held to render illegal and void a tax imposed beyond the constitutional limitation, at least in respect of the excess, and such a limitation is effective as to state taxes in districts where for local purposes a higher percentage is permissible. The limitation has been held to be a limitation only of the power to provide revenue by taxation on an ad valorem basis."

In Cooley, on Taxation, Chapter 3, Section 162, it is said:

"The amount or rate of state taxes on property rests in the discretion of the legislature where there is no express constitutional provision limiting the amount or rate, and the amount or rate of county, town, school or municipal taxes is in the discretion of the levying body unless there is a limitation in the state constitution, a statute or the charter. However, in order to protect taxpayers against the possibility of excessive taxes, the constitution in most of the states expressly limits the amount or rate of certain or all taxes.

"Where the tax limit is imposed by the constitution, then of course, no act of the legislature can impliedly extend the tax limit."

Although Section 73-7-22, N.M.S.A., 1953 Compilation, was passed before the 20 mill limitation amendment we feel that it is still operative, and that if a levy for that purpose can be made within the 20 mills the State Tax Commission may, in its discretion, require that it be made, as a general county tax. This levy would be made in the same manner as a general levy for school maintenance or for expenses of county government. If it is determined that the levy cannot be made within the 20 mills as in the situation in this case, then the 20 mill limitation as set forth in the Constitution would govern and you would be without authority to require the making of such a levy. In such event it would be necessary that the question of the making of this levy be first submitted to the qualified voters of the county affected, as provided in Article 8, Section 2 of our Constitution as above quoted. It is to be noted that Section 73-7-22, supra, does not provide for the submission of the question to the electors, and it may be that because of the absence of this provision it would be impossible to so submit it. However, in any event, the question could not be submitted in time for a levy to be made for the 1957 tax year, inasmuch as it is required that budgets be certified by the State Tax Commission during the month of September.

We trust the foregoing will answer your inquiry.

By: Santiago E. Campos

Assistant Attorney General