Opinion No. 68-54

May 27, 1968

BY: OPINION OF BOSTON E. WITT, Attorney General

TO: John E. Uxer, Ed. D. Director Legislative Finance Committee State Capitol Santa Fe, N. M.

QUESTION

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Once producing mineral property is placed on the tax roll on a one year valuation basis by the State Tax Commission under the provisions of Section 72-6-7 [6], N.M.S.A., 1953 Compilation, may it legally be returned to a five year basis without a record of affirmative action by the Tax Commission at a meeting of the commission?

CONCLUSION

No.

OPINION

*{*90}* **ANALYSIS**

Section 72-6-7, N.M.S.A., 1953 Compilation defines mineral property and provides that tax renditions for such property be made to the State Tax Commission rather than to the local county assessor. Procedures are then set forth as to methods by which the value of such property is determined by the Tax Commission, including the gathering of information in this respect.

Subsection 6 of the above section provides that the Commission shall determine the market value of the average annual output of productive mineral property, less certain allowable costs, over a period of five year (or so much of said period as the property has been in operation) next preceding they year in which the return is filed. The subsection then provides in part:

"Provided, however, that any person may elect to have his output valuation computed on an annual basis instead of on a five-year average basis. If such election is exercised, such person **may not change from the one-year basis except with the approval of the commission."**

(Emphasis added.)

Section 72-6-4, N.M.S.A., 1953 Compilation provides in pertinent part that it is the duty of the **Commission** to determine the value of mineral property.

It is a cardinal rule of statutory construction that words used in a statute will be given their usual and ordinary meaning unless the context discloses that some different meaning was intended by the legislature. **State v. Martinez,** 149 P.2d 124, 48 N.M. 232, 155 A.L.R. 811.

Another fundamental rule of statutory construction is that construction is uncalled for unless there is an ambiguity in the language of the statute. **George V. Miller and Smith,** 54 N.M. 210, 219 P.2d 285.

A third rule of statutory construction *{*91}* is known as **expressio unius est exclusio alterius** which means that expression of one thing excludes others. Where authority is given to do one thing and in a prescribed manner, it can only be done in that manner. **Fancher v. Board of Commissioners of Grant County,** 28 N.M. 179, 210 P. 237. In the case cited immediately above, County Commissioners were given authority to have certain records indexed by the county clerk. The Court held this prevented the County Commissioners from having anyone else index the records.

The word "may" in its ordinary sense is considered as permissive or directory. In this statutory provision it is, however, coupled with the word "not." The word "not" is "an adverbial particle expressing negation; -- (corresponding to the attributive no." Webster's New International Dictionary (2nd Ed.).

The use of the word "not" to modify "may" has the effect of removing any permissive or directory meaning of the word. There is nothing in the statutes which would require a meaning to be given these words that is different from their ordinary and usual meaning. As such it is unambiguous and not subject to construction.

Following the reasoning in the case of **Francher v. Board of Commissioners of Grant County,** supra, a change under the provisions of Section 72-6-7[6], supra, of an assessment of annual mineral output, from a one year basis to a five year basis, can only be made with approval of the Tax Commission. There is no other provision in our laws authorizing such a change in valuation procedures.

Approval of the change of assessment procedures of such property must be that of the Commission and not of one or more members of the Commission acting individually. The Chief Tax Commissioner has no statutory authority to act in such a case except as the Chairman of the Tax Commission.

Section 72-6-1, N.M.S.A., 1953 Comp. (P.S.) provides for commission meetings and sets the number need for a quorum. There is no statutory authority for the commission to act, except at a meeting, and no such authority outside of statutes exists.

The final area of consideration in answering the question is whether such approval requires affirmative action at such a meeting. It is our conclusion that it does require such affirmative action.

"Approval" is defined in Webster's New International Dictionary (2nd Ed.) in pertinent part, as follows:

"1. **Act** of approving; sanction.

2. Specific examination to determine suitability for acceptance. . . ." (Emphasis added.)

The term "approve" is defined by the work, in pertinent part, as follows:

". . . 2. **To afford proof of, as by active demonstration;** to manifest or display actually or practically; to exhibit.

3. To sanction officially; **to ratify; confirm;.** . ." (Emphasis added.)

Under the definition an expression of an affirmative act of the Commission at a regular meeting is required. An exercise of discretion is required, since the power to approve implies the power to disapprove. **Powers v. Isley,** 66 Ariz. 94, 183 P.2d 880; **Gustafson v. Wethersfield Tp. High School Dist. 191,** 319 Ill. App. 258, 49 N.C. 2nd 311.

It is our opinion that the method of valuation of such property cannot be changed from a one year to a five year basis except by affirmative action of the Tax Commission *{*92}* at a meeting, and absent evidence of such affirmative action, the assessment must remain on the one year basis.

By: James V. Noble

Assistant Attorney General