

STATE OF NEW MEXICO
OFFICE OF THE ATTORNEY GENERAL



HECTOR H. BALDERAS
ATTORNEY GENERAL

August 11, 2020

Senator Joseph Cervantes
2610 S. Espina
Las Cruces, NM 88001

Re: Opinion Request – Appropriate Amount of Compensation for an Elected County Assessor

Dear Senator Cervantes:

You requested an Attorney General Opinion regarding the interpretation of NMSA 1978, Sections 4-39-4 (1969) and 4-39-5 (1977, as amended 2015) as to the appropriate amount of compensation for an elected county assessor. Specifically, you asked whether an elected county assessor is entitled, with approval of the board of county commissioners, to the additional compensation provided in Section 4-39-5, or whether the additional compensation is limited to the amount set out in Section 4-39-4. You further requested an Attorney General Opinion as to whether a county which has paid an elected county assessor more compensation than permitted by statute is obligated to seek repayment of the overpaid amount. Based on our examination of the relevant New Mexico constitutional, statutory and case law authorities, and on the information available to us at this time, we conclude that: (1) elected county assessors are not entitled to the additional compensation contemplated in Section 4-39-5; and (2) the board of county commissioners is obligated to seek repayment of any amounts improperly paid.

ANALYSIS

A fundamental aim of statutory construction is to determine legislative intent, which is accomplished primarily by looking at the language of the statute and its legislative purpose. *State v. Andrews*, 1997-NMCA-017, ¶ 5, 123 N.M. 95, 934 P.2d 289. Statutes are to be read literally, so long as their words are plain and unambiguous, and a literal reading would not lead to an injustice, absurdity, or contradiction. *Id.*; see also *State v. Willie*, 2009-NMSC-037, ¶ 9, 146 N.M. 481, 212 P.3d 369.

The legislature is presumed to have been aware of statutes already in existence at the time that it enacts additional statutes. *State v. Martinez*, 1998-NMSC-023, ¶ 10, 126 N.M. 39, 41, 966 P.2d 747, 749. Statutes on the same subject should be read together, to preserve and to give effect to

each individual statute, unless the statutes are absolutely irreconcilable. *See James v. Bd. Of Comm'rs*, 1918-NMSC-106, ¶ 9, 24 N.M. 509, 513 (1918); *Martinez*, ¶¶ 9-10 (discussing interpretation of statutes *in pari materia* to determine legislative intent). This rule of construction prevents “repeal by implication”, consistent with the requirement that no statute be understood to repeal a prior statute on the same subject, unless the recent statute is “so broad in its terms, and so clear and explicit in its words as to show that it intended to cover the whole subject, and therefore displace the prior statutes.” *James*, ¶ 9.

Where the legislature has passed a statute dealing with a specific subject, that statute will be considered an exception to, and given effect over, a more general statute. *Stinbrink v. Farmers Ins. Co. of Arizona*, 1990-NMSC-108, ¶ 9, 111 N.M. 179, 182, 803 P.2d 664, 667 (internal citations omitted). This applies regardless whether the specific statute was passed before, after, or simultaneously with the general statute. *Id.*

Question 1: Compensation of an Elected Assessor

The question of compensation permitted for a county assessor is not dependent on an analysis of Sections 4-39-4 and -5 alone, but must be construed in the context of other relevant statutes and constitutional provisions governing the compensation of county officials.

At the outset, we note that the salaries of elected county assessors are capped by statute. Additionally, salaries are dependent upon the classification status of the county in which the assessor was elected.¹ For example, the annual salary of a class A county assessor cannot exceed \$86,929 pursuant to NMSA 1978, Section 4-44-4(C) (1957, amended 2018). The salary of a class B county assessor cannot exceed \$64,844, while the salary of a full-time class H county assessor is limited to \$75,733. *See* NMSA 1978, § 4-44-5(C) (1957, amended 2018) *and* § 4-44-14 (1955, amended 2018).

These statutes express the legislature’s stated intent that salary increases for elected county officials be provided in an equitable manner. *See* NMS 1978, § 4-44-12.3(A) (1991, amended 2018). Consistent with our Constitution, a salary increase approved by a majority of a board of county commissioners shall not take effect until the first day of the term of an elected county official **after** the date that a salary increase is approved. NM Const. Art. IV, § 27; § 4-44-12.3(B)(emphasis added); *see also State ex rel. Haragan v. Harris*, 1998-NMSC-043, 126, 968 P.2d 1173 (discussing unconstitutional mid-term salary increases).

To the extent that a county assessor is paid a salary which matches the salary caps imposed by Sections 4-44-4 through -5, or Section 4-11-14, any action by a board of county commissioners to provide annual salary exceeding the statutory limits would be a violation of the express legislative cap. However, a board of county commissioners is authorized to award additional compensation based on the county assessor having obtained an appraiser’s certificate. *See* NMSA 1978, § 4-39-4 (1969). That compensation would, by the plain language of Section 4-39-4, be “in addition to the salaries provided for county assessors.” *Id.*

While Section 4-39-4 was enacted in 1969, it was not until 1977 that the legislature enacted Section 4-39-5, providing additional compensation to “any qualifying appraiser employed in the office of the assessor.” *See* § 4-39-5. Both Sections 4-39-4 and -5 contain specific compensation amounts tied to the level of appraiser certification achieved. Notably, Section 4-39-4 is titled “Additional Compensation to Assessors”, while Section 4-39-5 is titled “Additional Compensation to Appraisers.” The plain language of Section 4-39-4 states the compensation supplements the salaries of county assessors. In contrast, the plain language of Section 4-39-5 states the additional compensation within that section is provided to “any qualifying appraiser employed in the office of the assessor.” § 4-39-5.

Sections 4-39-4 and -5 provide different rates of compensation for obtaining the same levels of certification. The plain language of the sections provide a lower rate of compensation to county assessors who obtain appraiser certification than to appraisers employed in the office of the assessor who obtain the same level of appraiser certification. Section 4-39-5 was amended in 2015 to increase the amount of compensation to be paid qualifying appraisers employed in an assessor’s office. No such amendment was made to Section 4-39-4 for assessors. *See* Laws 2015, ch. 78, §1 (amending § 4-39-5).

Given the rules of statutory interpretation, it appears the legislature intended to establish different levels of compensation for elected county assessors who obtain appraiser’s certificates and those employees of a county assessor’s office who obtain appraiser’s certificates. The later-enacted Section 4-39-5 does not evidence, through clear and explicit language, a legislative intent to displace the prior-existing Section 4-39-4. *James v. Bd. Of Comm’rs*, 1918-NMSC-106, ¶ 9, 24 N.M. 509, 513 (1918). To construe the relevant statutes otherwise risks a “repeal by implication” of the legislative distinction between the amounts of additional compensation set for elected county assessor and those set for employees of a county assessor’s office. Accordingly, the appropriate rate of additional compensation for a county assessor who obtains an appraiser certificate appears to be limited to the rate set out within Section 4-38-4.

Question 2: Repayment of an Overpaid Amount

As discussed above, the legislature has closely regulated the amounts which a county assessor can be compensated. This is consistent with the constitutional mandate and legislative directive that no county officer shall receive any salary, compensation, or emoluments in any form other than authorized by law. *See* N.M. Const., art. X, § 1, NMSA 1978, § 4-44-21 (1915).

Prior to the adoption of the state’s constitution, many county officials were paid out of fees those officials collected from the public, instead of being paid salaries set pursuant to statute. *See James v. Bd. Of Comm’rs*, 1918-NMSC-106, ¶ 14, 24 N.M. 509, 516-17 (1918)(discussing history of 1915 legislation establishing county officers’ salaries); *State ex rel. Gilbert v. Bd. of Comm’rs*, 1924-NMSC-001, ¶ 5, 29 N.M. 209, 213 (1924).

Here, under the question posed, if additional compensation were paid in excess of the amount authorized by statute, any such overpayment would be the result of actions by a board of county commissioners. Compliance by a county board of commissioners with state law as to a county assessor’s compensation would prevent any such situation from occurring and would obviate the

question whether subsequent remedial action was needed. Given the express legislative intent to pay county assessors those amounts authorized by law, it would appear that a board of county commissioners that failed to comply with the statutory requirements when it approved a county assessor's compensation would be obligated to seek repayment of the amounts improperly paid.

You have requested a formal opinion on the matters discussed above. Please note that such an opinion is a public document available to the general public. Therefore, we may provide copies of this letter to the general public. If we may be of further assistance, or if you have any questions regarding this opinion, please let us know.

Respectfully,



Marah deMeule
Assistant Attorney General

¹ See NMSA 1978, § 4-44-1 (1957, amended 2018) setting out county classifications for salary purposes. Classifications are based on property valuations and populations, and are determined biennially pursuant to NMSA 1978, Section 4-44-2 (1915, amended 2009).