

## Opinion No. 13-1092

August 11, 1913

**BY:** H. S. CLANCY, Assistant Attorney General

**TO:** Honorable James A. French, State Engineer, Santa Fe, N. M.

### **ROAD TAX.**

Cities cannot collect a \$ 3.00 road tax from residents of such cities.

### **OPINION**

{\*263} I am in receipt of your letter of the 8th inst. in which you state that demand has been made upon you by Mr. Alberto Garcia, on {\*264} behalf of the City of Santa Fe, for the payment of the sum of \$ 3.00 as a city road tax, Mr. Garcia exhibiting to you what purported to be a copy of an ordinance enacted by the City Council requiring the payment of a city road tax of \$ 3.00 by all male citizens between the ages of 21 and 60 years resident within the city limits.

You further state that you refused to pay this amount upon the ground that there was no statutory authority for a city council to levy such a tax, and for other reasons not necessary to here state. As a member of the State Highway Commission, under whose supervision are the county road boards who are authorized to expend funds that may be derived from taxation, you request the opinion of this office as to the validity of the city ordinance referred to.

Section 2436, Compiled Laws of 1897, confers authority upon cities to levy taxes "upon taxable property, real, personal and mixed, within the limits of the city."

Chapter 42, Session Laws of 1903, authorizes cities to grade and improve streets and assess the cost against abutting property.

Chapter 22, Session Laws of 1913, allows cities to assess all or part of the cost of street improvements against owners of abutting property.

I can nowhere find any provision of law granting authority to a city council to enact such an ordinance as the one in question, or to enforce the same. There is no question that a municipal corporation, such as the City of Santa Fe, is wholly under the control of the legislature which alone has the power to provide in what manner taxes shall be levied for its support, and such a corporation cannot levy and collect a tax for any purpose, unless specifically authorized by its creative body so to do. A city ordinance, to be valid, must be enacted by virtue of power delegated to the city council by the legislature, and the power to collect a so-called road tax of \$ 3.00 has not been, in the opinion of this office, conferred by the legislature.

It seems to have been well settled by the courts that the power of a municipal corporation to tax must be plainly conferred. Upon this subject Judge Dillon, in his work on Municipal Corporations, in Section 1377 says:

"It is a principle universally declared and admitted that municipal corporations can levy no taxes, general or special, upon the inhabitants or their property, unless the **power be plainly and unmistakably conferred**. It has, indeed, often been said that it must be specifically granted **in terms**; but all courts agree that the authority must be given either in express words or by necessary or unmistakable implication, and that it cannot be collected by doubtful inferences from other powers, or powers relating to other subjects, nor can it be deduced from any consideration of convenience or advantage."

Undoubtedly the power conferred by the legislature upon the City of Santa Fe to levy taxes upon real, personal and mixed property and to assess the cost of street improvements against owners of abutting property, has been exercised, but it cannot be contended that the imposition of the so-called road tax of \$ 3.00 is a tax upon property, "real, personal and mixed," and unless plainly authorized by the legislature, it would seem that such an ordinance as the one in question {*\*265*} would be declared invalid and unlawful, should the matter be presented to the courts.

You further inquire in your letter as to whether the payment of the road tax demanded by the city would exempt the person paying the same from the payment of the county road tax of \$ 3.00 which is authorized by statute. In answer to this, I have to say that the payment of the so-called city road tax of \$ 3.00 can, in no manner, exempt the person paying the same from the payment of the county road tax.