

Opinion No. 13-1146

December 24, 1913

BY: FRANK W. CLANCY, Attorney General

TO: Honorable O. N. Marron, State Treasurer, Santa Fe, New Mexico.

SALARIES OF STATE OFFICERS.

Apportionment of 1911 and 1912 taxes received by treasurer after November 30, 1913.

OPINION

{*326} I am in receipt of your letter of yesterday on the subjects of the salaries of state officers and of the apportionment of 1911 and 1912 taxes received by you after November 30, 1913.

{*327} You say that you are informed that I recently rendered an opinion that state officers should be paid their salaries as provided by the Constitution regardless of legislation upon the subject by the state legislature, and you ask whether that opinion would, in any way, affect the present situation as to the insufficiency of moneys in the salary fund to pay state officers in full on November 30, 1913.

The opinion to which you refer was one given to the State Auditor on the 30th of September, last. It does not go quite so far as to hold that state salaries must be paid regardless of legislation upon the subject by the state legislature, but it may be summarized as declaring that salaries fixed by the Constitution must be paid as long as there is any money in the treasury which can be applied to such payment. I am not willing to say that money appropriated by the legislature for other specific purposes can be properly diverted for those purposes to the payment of such salaries, but if the appropriation for such salaries is inadequate, or if the proceeds of taxes be insufficient to fill the appropriation for such salaries, then any other money in the treasury not specifically appropriated to any purpose, can properly be drawn upon for the payment of these constitutional salaries. We may properly go a step further and say that the same reasoning, upon which my opinion was based as to constitutional salaries, is applicable also to salaries fixed by the legislature. This also answers the question which you ask as to whether moneys coming into the treasury, the disposition of which does not appear to be fixed by statute, can be used for the payment of salaries.

As to whether back taxes of 1911 and 1912, received after November 30, 1913, should be covered directly into the 1913 tax fund, or be apportioned separately as were the 1911 and 1912 taxes, until the deficit in the salary fund is made up, I have conferred with the State Auditor, whose long experience makes him one of the best authorities on such subjects, and as a result I am of opinion that it can make but little practical difference whether you apportion those taxes, as they would have been apportioned if

received earlier, or whether you apportion them as though they were 1913 taxes. It would seem to be a matter as to which you can exercise your own discretion, but it would add somewhat to the labor of your office to make the apportionment as it might have been made, if the taxes had been received earlier, and then carry forward any surpluses to the next year. If apportioned like other collections, as soon as there is money enough in the salary fund to pay the deficiency which existed at the end of the last fiscal year, the Auditor will draw warrants upon the money to pay the portions of salaries which have been left unpaid.