

## Opinion No. 14-1255

June 23, 1914

**BY:** FRANK W. CLANCY, Attorney General

**TO:** Mr. Felix Baca, Albuquerque, New Mexico.

### **TAXATION.**

No appeal from action of county commissioners to State Board of Equalization.

### **OPINION**

{\*115} I have received your letter of the 22nd inst. in which, in substance, you ask the question whether a decision of a board of county commissioners upon a question referred to them by the district attorney of an application under Section 23 of Chapter 84 of the Laws of 1913, to correct an alleged error on the assessment book, is subject to an appeal to the State Board of Equalization, and you suggest the language used in Section 13 of the same act as a foundation of the claim that such an appeal should be allowed.

Section 13 is the one as to the power of the State Board over appeals and the particular language referred to is as follows:

"Such board at this meeting shall also have power to hear and determine any appeals taken as hereinbefore provided, and any other appeals from the action of any county board which may be taken by the state, or by any county, or by not less than ten tax payers of any county, acting through the district attorney."

The appeals referred to "taken as hereinbefore provided" are those of persons dissatisfied with the final decision of the county board of equalization and the other appeals referred to appear to be those taken by the state or county, or tax payers of a county. As stated by you, the action of the county commissioners to whom the district attorney referred an application for correction of the tax roll cannot be considered as the action of the county board of equalization {\*116} as that board would have no jurisdiction. The district attorney is not bound by the decision of the county commissioners as the statute puts on him the responsibility of being satisfied or not that the correction should be made and what the county commissioners have done can only be considered as advisory to him. I am, therefore, unable to see how there could be any appeal to the State Board from the action of the county commissioners.

The tax payer, however, is not without remedy. He can refuse to pay the tax and if sued for it can show in his defense the facts that he claims make the tax invalid, or he might institute a suit in the district court against the collector to enjoin him from collecting the tax which he alleges is wrongful.