

## Opinion No. 14-1290

July 30, 1914

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

**TO:** Rupert F. Asplund, Chief Clerk, Department of Education, Santa Fe, New Mexico.

### **SCHOOLS.**

As to making of tax levy for school purposes in the town of Gallup.

### **OPINION**

{\*149} I have not been able until this morning to find time to consider your letter of the 28th inst., enclosing correspondence with reference to the making of a tax levy for school purposes in the town of Gallup, as to which you say the question is whether the town trustees have the right to disapprove or amend the school levies recommended by the Board of Education under Chapter 51 of the Laws of 1912.

A brief review of the legislation on this subject may assist in reaching a conclusion as to the intention of the legislature in its last statutory expression on this subject.

By Section 1577 of the Compiled Laws, which was originally a {\*150} part of the Statute of 1891, it was provided that the Board of Education should levy a tax for the support of the schools of the city or town for the fiscal year next ensuing not exceeding five mills on the dollar, which levy should be approved by the city council or town trustees and when so approved was to be certified to the county clock to be placed on the tax roll of the county.

The law appears to have remained in this condition until 1907 when, by Section 25 of Chapter 97 of the Laws of that year, it was made the duty of boards of education of cities, towns and villages, to make an estimate for a tax levy and they were empowered to levy a tax not to exceed five mills, which levy should be certified to the board of county commissioners, thus entirely eliminating any action on the part of the city council or board of trustees. The same section contains provisions as to levy of special taxes upon a vote at an election and that levy also is to be certified to the board of county commissioners and if the commissioners decided the election to be legal that tax was also to be collected.

Chapter 51 of the Laws of 1912, by Section 7 thereof, makes it the duty of boards of education to make and certify to boards of county commissioners, an estimate of the amount of funds necessary for the ensuing year, and by Section 8 it is made the duty of county commissioners to levy a special school tax which, together with other revenues, will be sufficient to produce the amount required for such purposes, but the board is given power to disapprove the estimate and to levy such tax as it may deem proper.

The only thing that creates any doubt on this subject is to be found in Section 21 of Chapter 84 of the Laws of 1913. That section directs the city council or board of trustees of any city, town or village, to make and order a levy of taxes for all municipal purposes, including the support and maintenance of the public school, and certify the same to the county commissioners, thus restoring some intervention on the part of the board of trustees of a town between the board of education and the county commissioners. No absolutely certain conclusion is clear to my mind, but taking all the legislation together, I am of opinion that the intention was to leave the fixing of the amount of tax with the board of education, subject to possible revision by the county commissioners, and that the authority of the board of trustees in ordering a levy of taxes must be considered as limited by what has been previously done by the board of education. I think it would be greatly preferable, however, if this matter could be submitted to the district court for some definite decision and this could be done with but little delay or expense, and in ample time, as the county commissioners have no authority to levy any taxes until after receiving the certificate from the state auditor as to the levy of state taxes and that levy by the state auditor cannot be made until after the State Board of Equalization has finished its duties as to the revision and correction of assessment books.

I return the papers which were sent with your letter.