

Opinion No. 14-1370

October 23, 1914

BY: FRANK W. CLANCY, Attorney General

TO: Hon. H. B. Hamilton, Carrizozo, New Mexico.

ROADS.

As to the issuance of county bonds for road purposes under the provisions of Chapter 79 of the Laws of 1912.

OPINION

{*230} I have received your letter of the 21st inst. enclosing another from Mr. Charles E. Thomas, clerk of Otero County, in which he asks certain questions concerning the provisions of Chapter 79 of the Laws of 1912, which chapter is the one providing for the issuance of county bonds for road purposes.

His first question is as to whether the 4 per centum referred to in Section 1 of the act, is to be computed upon the entire valuation of property as returned to the assessor, or upon the one-third which is subject to taxation. The provision in the statute is only a repetition of what is contained in Section 13 of Article IX of the Constitution, and is in almost exactly the same language. I am of opinion that this limitation of 4% must be computed upon the one-third value. The language in the statute, as well as in the Constitution is "Four per centum on the value of taxable property as shown by the last preceding assessment for state and county taxes." Section 3 of Chapter 81 of the Laws of 1913 contains the provision about the one-third valuation, and there is a similar provision in Section 2 of Chapter 84 of the laws of the same year. By Section 3 of Chapter {*231} 81, it is provided that the State Board of Equalization shall fix a valuation upon certain kinds of property "for the purpose of taxation, of thirty-three and one-third per centum of the true value thereof;" and the next section provides that the boards of county commissioners, as to other property "shall fix the valuation thereof for taxation purposes, of thirty-three and one-third per centum of the true value." Section 2 of Chapter 84, after returns are made to the assessor, makes it "the duty of the county assessor to fix the valuation for purposes of taxation of all property contained in such list, or of which they may obtain knowledge in any other way; at one-third of the actual cash value thereof."

From these various provisions, the conclusion seems obvious that the assessment of property for state and county taxes, must be at one-third of the actual value thereof, so that the constitutional provision and the statutory provision about "the last preceding assessment for state any county taxes," must be held to refer to the valuation for purposes of taxation, which is one-third of the actual value.

At the time of the adoption of the provisions in Chapters 81 and 84 of the Laws of 1913, it was a matter of common discussion here that the intention was to limit the amount of county and municipal indebtedness so that it should not exceed 4% on the one-third valuation. That was the actual intention, and I believe the language used is sufficient to effectuate that intention.

Mr. Thomas further asks as to whether the requirement of Section 5 of the same act of 1912, as to the levying of a tax annually, in addition to the ordinary revenue of the county to raise a sum sufficient to pay the principal and interest on the bonds provided for by the act, compels the making of such a levy, beginning with the first year after the bonds are issued, and he calls attention to the fact that in bond issues, it has usually been necessary to levy for a sinking fund only after intervals of a number of years. It is quite probable that it was a mere oversight on the part of the legislature not to provide for the beginning of the accumulation of a sinking fund after a certain number of years, but as the statute stands, I believe that such additional tax must be levied from the beginning. While this may be unusual, it would so distribute the accumulation of sinking fund over a long period of years as to make a hardly perceptible addition to the tax levy.

Mr. Thomas further asks whether the funds derived from such an issue of bonds, should be expended in the same manner as other road funds by the county road board under the sanction of the State Board. The answer to this is to be found in Section 7 of Chapter 55 of the Laws of 1912, which provides that all funds derived from taxation, issuance of bonds, gifts or bequests, or from any other source, for road and bridge purposes, shall be expended under the supervision and direction of the county road board. This provision is so plain that it needs no explanation.

I return the letter from Mr. Thomas herewith.