

Opinion No. 15-1416

January 7, 1915

BY: FRANK W. CLANCY, Attorney General

TO: Mr. C. C. Royall, Assistant District Attorney, Silver City, New Mexico.

As to exemption from taxation of newly constructed railroads.

OPINION

{*11} Your letter of the 31st ultimo was received here on the 2nd of January, and answer to it has been delayed only because it got covered up with some other papers and has now just come to light.

You say that your county assessor has asked you to ask me to {*12} give you an opinion as to whether or not newly constructed railroads are exempt from taxation under our law. I did not see Mr. Shipley when he was here and I assume that it must have been before my return from El Paso.

If the statute of the territory on the subject of the exemption of railroads from taxation remains in force, the exemption still exists, but the doubt must arise only from the fact that the section of the constitution, which was Section 8 of Article VIII, providing that the legislature might, by general law, exempt new railroads from taxation for not more than six years from and after the completion of any such railroad and branches, is omitted from the amended Article VIII which was adopted by the people at the election in November. By Section 4 of Article XXII of the constitution all laws of the territory of New Mexico in force at the time of our admission into the Union, not inconsistent with the constitution, remain in force as the laws of the state. The statute exempting newly constructed railroads from taxation was certainly not inconsistent with the former Section 8 of Article VIII, but the new Article VIII authorizes the legislature to exempt from taxation property of each head of a family to the amount of two hundred dollars, and does not authorize the legislature to make any other exemption. It does directly exempt, in Section 3, a great variety of different kinds of property of a public character, and it may well be argued that the intent of this new Article VIII is to exclude any other exemption. On the other hand, it may be urged that the new article leaves the legislature without any limitation or restriction upon its power with regard to taxation, with the single exception that taxes must be in proportion to the value of tangible property, and shall be equal and uniform upon subjects of taxation of the same class, and that, therefore, there is no inconsistency between a statute giving the railroad exemption and the constitution.

I am not at all sure which of these views would be adopted by the courts, and as a practical matter I would advise the assessor, at the proper time, if there has been no legislation on the subject, to make an assessment upon such newly constructed

railroads, carefully giving notice thereof to the railroad company so that the matter could be presented to the courts at an early day and a judicial decision obtained. It is highly probable, however, that something will be done on this subject by the legislature shortly after it convenes.