

## Opinion No. 15-1461

February 27, 1915

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

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

**As to exemption of newly constructed railroads from taxation.**

### OPINION

{\*48} Referring again to the subject matter of my letter to you of January 7, which was as to whether or not newly constructed railroads are now exempt from taxation, I find that one view which ought to have been considered appears to have entirely escaped my attention at that time. That view is that our territorial statute, which exempted railroads from taxation for six years after completion of construction, continued in force after the adoption of the constitution because it was not inconsistent with former Section 8 of Article VIII of the Constitution which authorized the legislature to exempt new railroads from taxation for not more than six years after completion, and was, therefore, continued in force by Section 4 of Article XXII of the Constitution. In my former letter to you I said, after setting out the several views that might now be entertained as to the construction of the new Article VIII of the Constitution, that 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 newly constructed railroads. It did not occur to me as another practical question that it is not at all probable that there can be any new railroads constructed since the adoption of the amendment in November, last, but on the contrary, it is reasonably certain that any new railroads must have been constructed, or at least the construction begun before the change in the Constitution was made. I am of opinion that where a railroad company incorporates and enters upon the construction of a railroad, on the faith of the statutory exemption which has been offered, the action of the railroad company is an acceptance of that offer, and creates a contract the obligation of which cannot be impaired by the state without a violation of the clause next to the last in Section 10 of Article I of the Constitution of the United States. {\*49} Therefore, as to railroads constructed before the change in the Constitution, or of which the construction was begun before that change, I believe that the exemption from taxation continues for the statutory period of six years from the completion of the railroad.

It is not too late for you to advise your assessor in accordance with this qualification of my former opinion.