

## Opinion No. 15-1498

April 15, 1915

**BY:** H. S. BOWMAN, Assistant Attorney General

**TO:** Mr. Rupert F. Asplund, Chief Clerk, Board of Education, Santa Fe, N. Mex.

**Relative to tax levies to be made for general school purposes.**

### OPINION

{\*81} In reply to your letter of the 12th inst. requesting an opinion from this office in regard to the levy of the one-half of one mill for general school purposes upon the taxable property in each county on the basis of a full valuation of such property, I beg to state that the question involves a consideration of three of the tax measures enacted by the recent legislature as well as certain sections of Chapter 81 of the Laws of 1913.

Section 3 of Chapter 81 of the Laws of 1913 provides that the State Board of Equalization fix a valuation upon all property for the purposes of taxation, of 33 1-3% of the true value thereof for the purposes of state levies. Section 4 of the same act provides for a similar valuation for levies for all other purposes. These two sections are amended by the last sentence of the third paragraph of Section 12 of House Substitute for House Bill No. 327 of the second state legislature and known as the "Bursum Tax Measure." Herein it is provided that "all tangible property shall be assessed and taxed upon its actual value." Therefore, unless otherwise provided by more recent legislation, taxes shall be levied upon all property at its actual value and we have been able to find no legislation changing this part of the measure.

In the second paragraph of the same section, it is provided that,

"Each of the tax levies provided by law, in force at the time this act takes effect, except said special levies (referring to special school tax levies and special levies on specific classes of property), shall be and hereby is proportionately reduced so that the aggregate amount of such tax levies shall not exceed the maximum rates respectively specified in this section. Each of the said special (levies) on specific classes of property shall not exceed one-third of the maximum rate authorized by said laws."

An examination of the engrossed measure in the office of the Secretary of State shows that this bill was approved on March 12, 1915.

Senate Bill No. 51 of the second state legislature provides in Section 1 thereof,

"No county, city, town, village or school district shall, in any year, make tax levies which will, in the aggregate, produce an amount more than five per cent in excess of the

amount produced by tax levies therein during the year preceding, except as hereinafter provided."

The next section provides for the manner in which an excess of more than five per cent than the amount produced in the year preceding may be levied. This measure was also approved on March {82} 15, 1915, and filed in the office of the Secretary of State on the 16th day of March, 1915, at 9:25 a. m.

House Bill No. 232, known as the "County Unit Measure," provides in Section 1 thereof,

"That the Board of County Commissioners of each county shall annually levy and collect a tax of one-half of one mill on the dollar upon all the taxable property in the county for the maintenance of the public schools, the proceeds whereof shall be paid over to the State Treasurer as are other state taxes, and shall be added to the state current school funds."

This measure is shown to have been approved on the 16th day of March, 1915, and to have been filed in the office of the Secretary of State at 2:15 p. m. of that day. Your inquiry involves the construction of this last quoted section with reference to the sections of the acts previously quoted.

The county unit measure having been the last of the three measures approved and filed in the office of the Secretary of State would govern in any conflicts between its provisions and those of the two preceding measures. If the sections quoted cannot be reconciled so that they all might stand together, then the provisions of the act last approved and filed would be considered as governing.

There is no question but that the second paragraph of Section 12 of the Bursum act above quoted, providing for a reduction in the tax rate, was intended to equalize the difference that would follow from the provisions of the last sentence in the said section that will result from the change in the valuation of property for taxation purposes, but the reduction in the levy provided for in this section is effective only upon levies made and in force at the time that the act took effect, and as the county unit bill cannot be classed among such measures, this section would be of no effect insofar as the provisions of the county unit measure are concerned, excepting as to the valuation of property for taxation purposes. The Bursum act providing that all tangible property should be assessed and taxed upon its actual value makes it necessary for all taxation purposes that property should be taxed upon its actual valuation, and, therefore, the levy of one-half of one mill should be made upon actual valuation of property unless Section 1 of Senate Bill No. 51, above quoted, could be construed to limit the levy to a rate which would produce not more than five per cent in excess of the amount produced by tax levies during the preceding year.

As Senate Bill No. 51, however, was approved and filed prior to the approval and filing of the county unit measure and as Section 1 of the former named bill is in conflict with Section 1 of the county unit measure, in the event that the amount produced should

exceed five per cent of the amount produced during the preceding year, then the provisions of the county unit measure would govern.

There is a rule of statutory construction laid down by the courts that in those cases where there is a conflict between provisions of a general legislative act and of a special legislative act, that the provisions of the latter would prevail over those of the former. The Bursum tax measure is a measure providing for general taxation; the county unit measure is one providing for the levy and collection {\*83} of taxes for schools only and, therefore, is special as compared with the Bursum act. Such being the case, in the event of irreconcilable conflicts between the provisions of the two, those of the county unit measure would be considered to govern.

For the reasons above stated we believe that the inquiry in your letter of the 12th inst. should be answered in the affirmative.