

Opinion No. 15-1475

March 22, 1915

BY: FRANK W. CLANCY, Attorney General

TO: Honorable John W. Poe, President, State Tax Commission, Santa Fe, New Mexico.

As to amount of money appropriated for State Tax Commission.

OPINION

{*59} The Tax Commission has orally submitted to me for consideration and for my opinion the question, in substance, as to how much money is appropriated for the use of the Commission by the act of the legislature which created it, and I have reached the conclusion that the total appropriation made by that act is for the sum of \$ 16500.00, and will, as briefly as possible, state my reasons for this conclusion.

Were it not for the provision contained in Section 30 of Article IV of the Constitution it would be clear that the legislature had provided, in this act, for the expenditure of much more money, and I believe that that must have been the intent of the legislature, as the act speaks of traveling and office expenses of various kinds which would require, naturally, the use of much more money than the limit above indicated. That section of the Constitution reads as follows:

"Except interest or other payments on the public debt, money shall be paid out of the treasury only upon appropriations made by the legislature. No money shall be paid therefrom except upon warrant drawn by the proper officer. Every law making an appropriation shall distinctly specify the sum appropriated and the object to which it is to be applied."

Section 2 of the act provides for the organization of the Commission and the employment of a secretary, with certain specified qualifications, and the Commission is directed to fix the salary of {*60} the secretary, and is authorized to employ clerks, stenographers and assistants as may from time to time be necessary, and to fix their compensation, "provided that the total expenditures of the Commission for the compensation of such employes, including the salary of the secretary, shall not exceed the sum of \$ 12,000.00 per annum; such per diem, salary, compensation, traveling expenses and necessary expenses for printing, stationery and office supplies for the said Commission shall be paid on warrants drawn by the State Auditor upon certificates signed by the president and secretary of the Commission, payable out of the general salary fund." The per diem mentioned refers to the \$ 10.00 per day to be paid to the members of the Commission under Section 1 of the act, which is limited to ninety days in the aggregate during any one year, making a limit of \$ 4,500.00 for the Commissioners.

There is no doubt that the legislature contemplated the making of other expenditures by the Commission beyond the compensation of employes, but the only sum of money distinctly mentioned is that of \$ 12,000.00 per annum. Taking the whole of Section 2 together, we must necessarily hold that such other necessary expenses must be paid out of the \$ 12,000.00, unless some other provision is made therefor.

I am of opinion that, so far as the per diem of the members of the Commission is concerned, the first section of the act must be construed as making a continuing appropriation of money for their compensation up to a limit of \$ 4,500.00 per annum.

This is in accordance with the well established rule of law that where the Constitution of a state creates an office and prescribes the salary for such office, the necessity for legislative appropriation for such office is dispensed with on the ground that the provision in the Constitution is itself an appropriation, this rule having been extended to a general law fixing the amount of the salaries of public officers and prescribing its payment at particular periods. This can be supported by a multitude of authorities, but for our purposes it is sufficient to rely upon two cases in our own supreme court, the first of which is *State v. Sargent*, 18 N.M. 278-9, while the other has the same title and is in the same volume, beginning at page 627. At page 637 the court says distinctly that the act of 1905 created the office of superintendent of insurance and provided a permanent salary for him, which amounted to a continuing appropriation out of the insurance fund, and required no subsequent appropriations by the legislature. The court held against the claim of the superintendent of insurance to be paid his salary on account of subsequent legislation which showed a legislative intent that he should no longer be paid out of the insurance fund in accordance with the original act, but to depart permanently from that policy and to provide for his salary by appropriations in the general appropriation bill.

I am, therefore, of opinion that the first section of the act creating the State Tax Commission meets the constitutional requirement of an appropriation made by the legislature, and of the other requirement that it distinctly specifies the sum appropriated and the objects for which it is to be applied. No appropriation is made {*61} in that section for the traveling and hotel expenses of the members when absent from home in the performance of their duties. For the payment of those and other expenses we must look to the fund provided by the second section, which is the sum of \$ 12,000.00 per annum. Any different construction would tend to defeat the manifest intent of the legislature, in a great part at least, in creating this Commission and prescribing its duties and powers.

While not responsive to your request for my opinion, it may save further reiteration of this opinion to say that it is equally applicable to recent acts of the legislature providing for the appointment of a state traveling auditor, in which his salary and the salaries of two assistants are fixed; to the office and salary of the state bank examiner, for which provision is made in an act to define and regulate the business of banking, and to the salaries of the game warden, his deputy and clerk, contained in another act recently

adopted by the legislature, as to none of which is there any distinct appropriation made in the general appropriation bill.