

Opinion No. 15-1542

June 4, 1915

BY: FRANK W. CLANCY, Attorney General

TO: Capt. W. C. Reid, Albuquerque, New Mexico.

As to the levy by school districts of eighteen mills as special school tax under the provisions of Chap. 79, Sec. 5, Laws of 1915.

OPINION

{*122} Mr. Ernest has brought to me a copy of your letter of May 17th to Mr. George Ulrick, a member of the State Tax Commission, in which you say that you have information that very little attention will be paid to the limitations in the school bill as to taxes, that is, that some of the districts will proceed to levy the full eighteen mills authorized as a special school tax by Section 5 of House Bill No. 232, which is commonly known as the "County Unit School Bill," and you express the desire that the Secretary to the Commission should induce the Attorney General to write a circular letter to the district attorneys advising them of the limitations so that there will be no illegal school levies.

At the time that Mr. Ernest brought me this letter, I had been told that you would be here the next day and I delayed doing anything about it in the hope of having an opportunity to confer with you personally before taking any step, but I did not see you and do not know whether you were here at all or not.

In the first place, the school districts cannot levy any tax. The duties of the district officers are limited to making estimates in detail of the amount of funds necessary for school purposes, which estimate is to go to the county superintendent of schools. The county superintendent has certainly some sort of authority over the estimate as he is to pass upon it and then certify the estimate to the county commissioners "as made, passed and determined upon by him." Even after this the county commissioners appear to have some discretionary power, as the statute declares that the estimates shall be passed upon by the county commissioners before the close of their July meeting. The county commissioners are then authorized annually to levy a special school tax which, with the other revenues provided by law, shall produce sufficient revenue to support and maintain the schools for seven, eight or nine months "in accordance with the estimates as made and finally passed upon for such district."

Thus you will see that the preparatory work of the school districts must be passed upon and determined by the county superintendent {*123} and even after that, there is a further control in the hands of the county commissioners. This clearly lessens the danger of any excessive levies under this statute, and I am informed by the Department

of Public Instruction that in all human possibility there will be no county in which the levy will exceed six mills.

I will enclose herewith, for your information, copy of a bulletin issued by the State Superintendent. From that bulletin you will see that the attempt has been made to try to give information to the various local officers which would, if carefully followed, make any excess in the way of levies quite improbable.

I am quite willing to send a letter to the district attorneys if you think it advisable, distinctly calling attention to the limitations in the statute to which you refer in your letter, and especially to the limitation as to the levy of taxes which would produce more than five per cent in excess of the amount raised during the preceding year, as this act is not included in the circular issued by the State Superintendent.