

Opinion No. 15-1545

June 9, 1915

BY: H. S. BOWMAN, Assistant Attorney General

TO: Hon. W. B. Walton, Silver City, N. Mex.

As to the maximum tax levy for the town of Silver City.

OPINION

{*126} The opinion from this office requested by you as to the effect of the last clause of Section 12 of House Substitute for House Bill No. 327, as amended, known as the Bursum Tax Measure, upon Section 6 of Article VIII of the Charter of the Town of Silver City, has been delayed owing to the absence of the Attorney General from the city for a period of ten days, the illness of Assistant Attorney General H. S. Clancy, which has kept him away from the office for the greater part of the last three weeks, and my own absence from the city on business for several days. Even at this time I have not been able to make such an examination of the authorities as I consider the importance of the question requires, but from what investigation of the subject I have been able to make, the following conclusions have been reached.

By a special act of the Territorial Assembly of 1878, the town of Silver City was incorporated and certain powers were granted and delegated to the officers of the town as created by the Act, among them being the power of the council "to levy and collect a tax not to exceed one-half of one per cent, within any one year upon all the taxable property within the limits of said town for general purposes and "to declare what property shall be taxed and to determine the value thereof." The question as to the right of your municipality to place a valuation upon the property of the {*127} town for the purposes of taxation different from that provided for in the Bursum Act is not involved as I understood you to state that the property of the town has been valued for some time at its true full valuation for taxation purposes, and therefore that part of the Act granting the right to the council to declare what property shall be taxed and to determine the value thereof, insofar as the same may be in conflict with the provisions of the later general legislation will not be discussed.

The last clause of Section 12 of the Bursum tax measure provides that "The maximum rate of tax to be levied for city, town or village purposes or uses, shall not exceed three mills on the dollar." It would appear as if this section of the general taxation measure is in conflict with the section of the Charter above quoted providing for a maximum levy of one-half of one per cent upon all the taxable property within the limits of the town. There is nothing in the Bursum act expressly repealing or in any way altering the provision of the Silver City charter providing for the five mill levy, and therefore if there is any such repeal or amendment it must be implied in the language of the latter statute.

In addition to the well known rule that repeals by implication are not favored by the courts, there is the other well defined proposition "that affirmative statutes of a general nature do not repeal by implication charters and special acts passed for the benefit of particular municipalities, unless this appears clearly to have been the purpose of the legislature." The above is the rule as stated in Dillon on Municipal Corporations, Fifth Edition, Vol. 1, page 446, Section 235. This eminent authority upon municipal law after enunciating this rule proceeds as follows: "If both the general and special acts can stand, they will be construed accordingly. If one must give way, it will depend upon the supposed intention of the lawmaker, to be collected from the entire legislation, whether the charter is superseded by the general statute, or whether the special charter provisions apply to the municipality, in exclusion of the general enactments." As both the provisions of the charter and those of the Bursum Act in regard to the maximum tax levy for town purposes cannot apply to the town of Silver City, being irreconcilably in conflict, it must be ascertained what was the intention of the legislature as to which provision should prevail. This intent can be gathered only from the language of the acts which are involved, and it does not appear to the writer as if there is any such clear purpose of intention to repeal expressed in any part of the General Tax Measure as would justify a holding that the maximum tax levy for the Town of Silver City could be only three mills in the face of the Charter enactment providing for a five-mill levy. The language of the clause of the General Tax Measure providing for the maximum levy for cities, towns and villages, does not use the broad wording that it might have used had it been intended that it should apply to municipalities created under special laws. The language employed is, "The maximum rate of tax to be levied for city, town or village purposes or uses, shall not exceed three mills on the dollar." Had the legislature intended that cities and towns incorporated under special acts should be limited in the levy of assessments, {^{*128}} the same as those created under general laws for incorporation of cities, it is proper to assume that they would have incorporated in the section after the word "uses," the words "whether incorporated under general or special act." And while it is true that there is a provision in this act which states that all acts and parts of acts in conflict with this act are hereby repealed, it has frequently been held that such provision is too general when attached to general legislation to admit of the repeal by it of special charter and statute provisions, and in some cases it has been held that such a section is surplusage and void as any effect upon special legislation in regard to the same subject.

I might state that the foregoing views are concurred in by both the Attorney General and by Assistant Attorney General H. S. Clancy.