

Opinion No. 15-1549

June 9, 1915

BY: FRANK W. CLANCY, Attorney General

TO: State Tax Commission, Santa Fe, New Mex.

Authorized county tax levies.

OPINION

{*129} I have received from your Secretary a statement as to all authorized county tax levies with a list of such levies, which I have examined with considerable care, and while the document is of some length, yet I believe it could not have been made any shorter and still be complete.

He has asked me to make any suggestions or comments which I think necessary, and in attempting to do so, in order to be clearly intelligible, it seems well here to reproduce the statement which he has handed me, which is as follows:

AUTHORIZED COUNTY TAX LEVIES.

Section 12 of House Substitute for House Bill No. 327, as amended, approved and effective March 12, 1915, which will be published as Chapter 54 of the Laws of 1915, provides that the maximum rate of tax to be levied for all county purposes and uses, excepting special school tax levies, and special levies on specific classes of property, shall not exceed five mills on the dollar, and that each of the tax levies provided by law in force at the time said act takes effect, must be proportionately reduced, so that the total shall not exceed the limit of five mills, but this limitation does not include levies for the payment of the public debt or interest thereon.

Section 1 of Senate Bill No. 51, approved March 15, 1915, and effective June 11, 1915, which will be published as Chapter 74 of the Laws of 1915, provides that no county 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.

The following levies are shown as provided in previous laws, and are embraced within the above limitations:

FUND.

Court, Sec. 923, C.L. 1897.

mandatory, sufficient to pay expenses No limit.

General County,

discretionary, but not to exceed 5 mills, Ch. 90, Laws 1901.

General Road,
discretionary, but not to exceed 3 mills, Ch. 53, Laws 1907.

Court House (and Jail) Repairs,
discretionary, but not to exceed 2 mills, Ch. 108, Laws
1903.

Wild Animal Bounty,
mandatory, but not to exceed 1 mill, Ch. 104, Laws 1909.

Special Bridges,
discretionary as to making contracts, No limit, Ch. 32, Laws
1913.

but if made it is mandatory to make (Except as to contracts
such levies that the taxes will not previously made.)
exceed the following amounts in any
one year:

Class A. \$ 25,000.00

Class B. \$ 10,000.00

Class C. \$ 3,500.00

Boarding Prisoners,
discretionary, but not to exceed 3 mills, Ch. 8, Laws 1905.
1st class counties only.

Court House Building,
discretionary, but not to exceed 5 mills, Ch. 54, Laws 1905.

Judgment,
discretionary, but not to exceed 2 mills, Ch. 108, Laws
1909.

Transcript of Records,
discretionary, but not to exceed 3 1/2 mills, Ch. 28, Laws
1907.

Special Road,
discretionary, but if made must be 5 mills, Ch. 119, Laws
1909.

El Camino Real Bridge,
mandatory, but not to exceed 1 mill, Ch. 7, Laws 1905.

in the following counties: Berna-
lillo, Colfax, Dona Ana, Mora, San
Miguel, Santa Fe, Sandoval, Sierra,
Socorro, Valencia.

Indigent,
discretionary, but not to exceed 1/2 mill, Ch. 8, Laws 1913.

Survey,
discretionary, but not to exceed 2 mills, Ch. 34, Laws 1912.

County High School,
discretionary, but not to exceed 2 mills, Ch. 57, Laws 1912.

Interest and Sinking Fund, (Not within the 5-mill
limit)

mandatory, no limitation, but a sufficient levy is required to cover.

{*130} The following Special Levies may be made, subject to the five per cent limitation provided in Senate Bill No. 51, but must not exceed one-third of the maximum rate heretofore authorized:

FUND.

Horticultural Commission,
mandatory, but not to exceed 5 mills, Ch. 59, Laws 1912.

(Only on orchard lands and lands upon which are growing ornamental trees, shrubs or vines, and all lands used for nurseries.)

County Flood,
discretionary, but not to exceed 2 mills, Ch. 19, Laws 1905.
on property within 5 miles of river.

Bees, Ch. 11, Laws 1912.

mandatory, and must be 7c per colony, no more, no less.

The following Special Levies may be made:

FUND.

Artesian Well, mandatory. Ch. 81, Laws 1912.

See limits, providing for not more than \$ 1.00, \$ 3.00, or \$ 10 per well.

Sprinkling, Ch. 31, Laws 1907. discretionary, but limited to expense, and assessed against owners of property abutting streets sprinkled: For unincorporated towns having population of 2000 or over.

{*131} SCHOOL LEVIES.

Maintenance of Public Schools,
mandatory and fixed at 1/2 mill. House Bill No. 232,

1915 Legislature, which will be published as Ch. 79.

Special School,
mandatory, but not to exceed 18 mills, House Bill No. 232,

1915 Legislature.

Special District Tax,
mandatory, for site, construction and

first equipment of school house, and for district debt. No limit.

The first thing which attracts attention is that the requirement that each of the tax levies provided by law in force at the time Chapter 54, 1915 takes effect must be proportionately reduced so that the total shall not exceed the limit of five mills, is difficult of application to the levy for the district court fund, as there is no limit in the statute as to that levy so that we could apply the proportionate reduction. However that may be, as the maintenance of the district court is undoubtedly a county purpose, whatever is levied for the court expense must not make the total levy exceed five mills.

While the statute says that each tax levy provided by law in force at the time the act takes effect must be proportionately reduced, yet it is not to be understood from this that more is intended in the case of levies for which maximum rates are provided, than to effect the mere reduction of the maximum levies, and in view of the unlimited power to levy for court expenses, it is difficult to say how this provision about proportionate reduction can be applied with any mathematical accuracy.

The first to the fifth items in the foregoing statement do not seem to call for any further comment.

As to the levy for special bridges, under Chapter 32 of the Laws of 1913, attention should be called to the fact that in order to raise money to make payments upon contracts made before the enactment of the statutes of 1915, levies must be made, even though in excess of the five mill limitation, to meet the payments under such contracts, as the legislature has no power under the constitution to impair the obligation of these contracts and they must be carried out so far as they have been lawfully made in accordance with their terms.

As to this levy for the construction of county bridges, while there is no limit to the rate of taxation, yet there is practically a limit by the specification of the amounts of money which can be raised in any one year in counties of different classes. The addition of this bridge tax, however, must be included within the five mill limit and must not be allowed to run the levies beyond that limit, except as to contracts made before the last legislation as to which levies must be made in accordance with the terms of the contracts.

{*132} As to the levies for boarding prisoners, for court house building, judgments, transcript of records, special road tax, Camino Real bridges, for care of indigent poor, for county survey and county high school, of which all except the Camino Real bridges are discretionary with the county authorities, they must not be allowed to make aggregate of all the levies go beyond the five mill limit.

The levy for interest and sinking funds is not within the five mill limit and has no limitation except that the rate must be sufficient to raise the necessary amount of money.

One of the most important limitations to be kept in mind is that contained in Chapter 74, 1915 which provides that 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 under specific authorization from the State Tax Commission upon application made to that Commission. This must be held applicable to all the taxes except levies for interest on the public debt and for sinking fund to pay such debt as those levies must be made sufficient to meet the requirements of the interest and sinking funds. This five per cent excess limit cannot, however, be held applicable to the mandatory one-half mill levy required by Section 1 of House Bill No. 232 for school purposes. There is some practical difficulty in making it applicable this year to the special school tax provided for in the same act which is not to exceed eighteen mills, as this is a new general county tax which takes the place of numerous special school district taxes provided for in the school laws heretofore in existence, but I believe that it can be made applicable by figuring the aggregate of the product of county school and school district taxes produced under the levies of 1914, and in that way this tax can be so adjusted as not to exceed the five per cent excess limit.

In this connection, attention should be called to the fact that without doubt this eighteen mill limit was fixed at a time when property was made taxable upon one-third of its actual value, and no attempt ought to be made in any county remotely to approach the eighteen mill limitation. I have been told by the State Department of Public Instruction that there is probably no county in the state where, under this power, the levy will exceed six mills on the dollar. It is obvious that six mills on the dollar on full valuation will produce as much as eighteen mills on one-third valuation. However that may be, the limitation of not more than five per cent excess over the product of taxes of last year, will effectually keep down any tendency to extravagance under this authority.

The County Commissioners, in making this levy which is limited on the face of the statute to eighteen mills, should bear in mind that this tax does not cover all the money available for the support and maintenance of schools as will be seen by reference to the language of the act itself which authorizes the County Commissioners annually to levy this special school tax, "which, together with the other revenues provided by law, shall produce sufficient revenue to support and maintain said schools." Such other revenues {*133} are derived from liquor licenses and from the distribution of the state current school fund which includes the income of the state permanent school fund, all fines and forfeitures collected under general laws, and the income from leasing public school lands which current school fund is distributed among the school districts in proportion to the number of children of school age in each district. In eighteen of the twenty-six counties of the state, there is another source of revenue from the earnings of forest reserves. The amount to be expected from such other sources of revenue can be approximately ascertained by reference to what has been received in the past, and in case of any doubt, the State Department of Public Instruction can probably furnish specific information.

It should be added that the tax of 7 cents on each colony of bees does not seem to fall within the legislative intent as to the reduction of one-third of the rate heretofore authorized, nor can it be held subject to the five per cent excess limitation. It is not in the nature of a rate tax, but is fixed at a specific amount upon each colony of bees and to hold that it must be reduced or limited in any way, would clearly defeat the object of the statute which authorized its levy.

In conclusion, it may be well to call attention to the fact that county commissioners should make no levies until after the State Auditor has certified the levy of all state taxes to the county commissioners, as will be seen by reference to Sections 19 and 20 of Chapter 84 of the Laws of 1913. I speak of this because of a rumor that some county commissioners are under the impression that they could make the county levies in July, but this is quite impossible as the State Tax Commission cannot examine the tax rolls and hear appeals until sometime in July at the earliest, and the State Auditor cannot make the levy of state taxes until the Tax Commission has concluded its labors.