

Opinion No. 15-1552

June 15, 1915

BY: FRANK W. CLANCY, Attorney General

TO: Mr. T. J. Guilfoil, Chief Accountant, State Tax Commission, Albuquerque, N. M.

State Tax Commission is authorized to require statements and reports from taxpayers.

OPINION

{*135} Yesterday I received your letter of the 12th inst., but was so occupied all day that I had no opportunity to answer it.

You ask for my opinion as to several matters connected with the work of the State Tax Commission, the first of which is as to the meaning of Section 9 of the act creating the State Tax Commission, which is printed as Chapter 54 of the session laws. That Section is as follows: --

"The state tax commission shall prescribe the forms for the assessment rolls and books for use in the several counties by the county assessors, and for tax schedules, statements and returns, and such other books, forms, statements, reports, maps and plats as the commission shall determine or deem necessary for the use of assessors, tax-payers or the commission, and shall cause the same to be printed, prepared and distributed as the commission may determine, or as shall be provided by law. Provided: That contracts for printing and preparing the same be let to the lowest responsible bidders after advertising for bids in the usual manner."

You desire to know whether under the authority given in this section the commission can require statements and reports from taxpayers in such form as the commission may deem necessary to fix the value of the property owned by the taxpayer. I am of opinion that the language used is so broad as to authorize the commission to prescribe the forms of statements, returns, reports to be filled up by taxpayers for the use of the commission. I can understand, however, that some taxpayers might refuse to fill up the forms prescribed by the commission, and there is no direct authority given by which the commission could compel the making of the statements and reports required, but in case of refusal, resort could be had to the power given in Section 7 of the same act to get the necessary information. That section authorizes examinations or investigations by the commission, the administration of oaths and the issuance of subpoenas to compel the attendance and testimony of witnesses and the production of books and papers. In case of refusal to appear and testify in answer to such a subpoena, the commission can invoke {*136} the aid of any court in the state, and in case of continued refusal, the court can punish the person called upon the same as for contempt of court. I

anticipate, however, that there will be but little difficulty in obtaining any returns, reports or statements from taxpayers for which the Tax Commission may call.

You next ask as to the matter of an adjournment of the July meeting of the State Tax Commission, and refer to the language in Section 6 which prescribes the duty of the commission as to examining the assessment rolls "At its July meeting in each year or any adjournment thereof." This is a recognition by the legislature of the probability of an adjournment of that meeting being necessary, but I am of opinion that even if that language had not been used in the act, it would still be within the discretion of the Tax Commission to adjourn the July meeting or any other meeting.

You next call attention to paragraph 5 of Section 2 of House Bill No. 382, which is printed as Chapter 55 of the session laws, and is an act providing for the assessment of mines, which reads as follows:

"A true and correct statement and account of the actual expenditures of money and labor in extracting such ore or mineral from the mine or mineral lands and of transporting the same to the mill or other treatment or reduction or refining works, the cost of the preparation, treatment, reduction, refining and handling of the same and conversion thereof into money or its equivalent."

You say that it is the practice of mining companies to set aside from the revenues of a current year, a reserve on account of depreciation of plant and equipment or for the creating of a reserve to restore to the stockholders the capital investment, and you ask whether this reserve can be made a charge against the operating expenditures, or rather whether it could be included as a part of the expenditures, and you call attention to Section 3 of the same bill in this connection, which reads as follows:

"In making the statement of expenditures mentioned in the preceding section there shall not be included therein any amounts expended for machinery, or other improvements, or appliances for such mining operation or for improvements made for the purposes of reducing or refining such mineral, or for the construction of mills or other reduction works, including coke ovens, and washeries, or improvements made for transporting of such mineral; but all expenditures made for any and all such improvements, structures, buildings or other facilities shall be considered as part of the capital account of such mining operations and as no part of the operating expense thereof. Such expenditures shall not include the salaries, or any portion thereof, of any person, or officer, not actually engaged in the working of such mine, or in the reduction, transportation, sale or refinement of such mineral, or personally superintending the management thereof."

Even without that which is contained in Section 3, I would be of opinion that the language of Section 5 which requires a statement ^{*137} of "actual expenditures," would not permit the inclusion among those expenditures of the amount charged off as reserve, in which, as you say, no money expenditure is involved and which is merely a bookkeeping transaction. If there could be any doubt, however, about this, I believe that

it would be entirely removed by that which is contained in Section 3, although Section 3 makes no distinct reference to the creation or charging of a reserve fund.

You further say that attention has been called to mining companies which have bonded indebtedness upon which the interest is not being, or has not been, paid, and that the practice is to set aside the interest, taking it from the net income account although no interest is being actually paid, and you ask whether such a charge could be permitted as a part of the expenditures covered by Paragraph 5 of Section 2 of the act. That paragraph calls for a statement of "actual expenditures" and I can see no way by which accruing interest not actually paid out could be included as actual expenditures for the purposes specified in said Paragraph 5.