

Opinion No. 15-1634

September 7, 1915

BY: FRANK W. CLANCY, Attorney General

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

Construction of parts of the law creating the State Tax Commission.

OPINION

{*206} I have before me your letter of yesterday asking three questions with regard to the proper construction of parts of the law by which your Commission was created. Of these the third one is of such a character that I would prefer not to attempt to answer it at the present time as it involves the consideration of certain practical questions as to which I would like to confer with the State Auditor, and which it may not be necessary to pass upon at the present time.

Your first question is as to the power of the Commission, under Section 6 of the statute, which as you say, requires the Commission to ascertain the total value of taxable property in each county of the state and to bring the assessed value to the actual value by percentage raises or decreases, which the assessor shall extend by adding or deducting the same percentage upon the total assessed valuation of the property of each tax-payer in such county." You ask whether, if the Commission should find that different classes {*207} of property in a given county are underassessed in different amounts, the Commission has power to raise each of such classes by a different percentage. I believe it would be at least very doubtful if the Commission has power immediately upon the ascertainment of such a condition as the one which you suggest, to make a number of different orders of increases in the assessment of different classes of property in varying percentages, and that it would be unsafe to do so as it almost certainly would provoke some controversy. I do not, however, think that such a condition is beyond remedy by the Commission.

An examination of the section referred to will show that the power given to the Commission, when upon examination of the assessment rolls it finds that the actual value of taxable property in any county as determined by the Commission is more or less than the valuation shown upon the assessment roll, is by order to increase or decrease as the case may be, the total valuation of all the property in the county subject to taxation as shown by the assessment roll, except the property, the valuation of which shall have been fixed by previous orders of the Commission, and except property which the Commission shall find to be assessed at its actual value, by such percentage as will bring the total valuation to the actual value as ascertained by the Commission. Under this general power if the Commission should find that one class of property was assessed at its actual value while no others were, the Commission could make an exception of that class of property and make its order for an increase or decrease of all

other property on the tax rolls; or it could, if possessed of sufficient information, except the property of any individual taxpayer which it finds to be assessed at actual value. After making such exceptions, if any exist, I believe as already stated, it would be unsafe to make different orders for increases or decreases by varying percentages of different classes of property, but the Commission in the exercise of the power thus given and defined, can make one general order for a percentage increase or decrease of all property in the county for the purpose of bringing the total valuation of such property to the actual value as ascertained by the Commission. Obviously, this would not effectuate the purpose which you have in view of approaching, as nearly as possible, to a fair and equitable assessment of all property and of all classes of property, but there is a remedy provided in the last sentence of the same section which declares that the Commission "Shall have authority to amend or modify any order made by it upon a proper showing made within thirty days after the date of the entry of such order." Under this authority, you can, upon any proper showing, and as to what is a proper showing is a matter entirely within the discretion of the Commission and I believe it would be sufficient if your record recited that a proper showing had been made, to amend and modify your general order for an increase of all property by making a series of orders applicable to different classes of property, or even to the property of individual taxpayers so as practically to bring about the result indicated by the statute of raising the valuation of all the property in the county up to the actual value thereof, and I {208} recommend that you pursue this course which I believe will keep the matter clearly within your jurisdiction as fixed by the statute.

In your second question you call attention to the fact that Section 1 of the act provides "That no session or meeting of such Commission shall continue for a longer period than ten days," but Section 3 provides that special meetings may be held. You also call attention to the fact that Section 6 provides that at its July meeting, or any adjournment thereof, the Commission shall examine the assessment rolls and make orders which will bring the assessed value of property in each county to the actual value, and you say that the present meeting is an adjournment of the July meeting and that it is possible, owing to the length of time consumed in hearing appeals, that you will be unable to perform all your duties within the ten day period limited in the statute, and you ask if you should adjourn at the end of the ten days and call a special meeting to begin on the day following for the purpose of completing unfinished business, would orders made during such special meeting be legal or illegal. I am of opinion that such restrictive language as is contained in the statute to which you call attention must, from the very nature of things, be directory only. If it should be a physical impossibility, with a due regard to a proper discharge of your duties in hearing and passing upon appeals which, by Section 5 are to be heard and determined at the July meeting, it cannot be held that the legislative intent was to prevent the consideration of such appeals and deprive aggrieved parties of any opportunity to be heard; and still more strongly would it seem to be impossible to believe that the proceedings and orders contemplated by Section 6, which must be subsequent to the hearing and determination of the appeals, can never be had except within the limit of the ten days. I am firmly convinced that the Commission can call a special meeting to follow immediately after the expiration of the ten day period, of the July meeting, at the same time making an order that all unfinished

business shall be taken up at that meeting, and that the subsequent proceedings will be held to be legal. I think it advisable that at the termination of the ten days, you should put on your record a statement to the effect that the ten days limited by law being about to expire, and there being a large amount of unfinished business before the Commission, a special meeting is called to take up and dispose of that unfinished business and of all other matters which may come before the Commission. I believe that the limitation in the statute must be so far regarded that you should bring your July meeting to a close with the expiration of the ten days.

Any other view of the law would be destructive of its operative effect and would make it impossible for the Commission to perform its duties, and it would be violative of one of the cardinal rules of statutory construction if we should reach a conclusion which would impute folly and absurdity to the legislature.