

Opinion No. 15-1642

September 27, 1915

BY: FRANK W. CLANCY, Attorney General

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

Tax levies under Section 1, Chapter 74, Laws of 1915.

OPINION

{*214} Upon my return from Las Cruces, I find your letter of the 20th inst. which has not been sooner answered only on account of my absence.

You say that you are "pretty well convinced" that the five per cent limitation as to the increase of taxes over what was produced the preceding year, to be found in Section 1 of Chapter 74 of the Laws of 1915, must include interest and sinking fund levies as well as other levies. Your idea, as you state it, is not that those levies should be limited so that there would be a deficiency, but that the levies for interest and sinking fund and for the court fund should be made first and all other levies must be so reduced that together with the interest, sinking fund and court fund levies, the total amount produced will not be in excess of five per cent more than that produced in the preceding year.

I had not taken this view of the matter when I wrote the letter which the Secretary of the State Tax Commission had printed and distributed, and after again reading the limitation in Chapter 74, I am unable to reach a different conclusion. It is quite true that a literal reading of Section 1 of that chapter would seem to include all kinds of taxes, but close adherence to the letter of a statute will often result in a violation of the legislative intent and of the spirit with which the enactment was made. I believe that the limitation was intended as a check upon possible extravagance in the ordinary expenditures of counties and municipalities, while at the same time, recognizing the probable necessity of an increase in expenditures from one year to another. To adopt the literal view that the public debt and court fund levies must first be made and then all other levies kept down so that the total would not aggregate an increase of more than five per cent over the preceding year, might entirely defeat the recognition of the idea that some increase in general expenditures would be needed as time goes on and indeed might result in an absolute reduction of the other levies for ordinary purposes. When we consider the possibility of such a result, I cannot believe that the legislature intended anything of that kind. Moreover, in the last paragraph of Section 12 of Chapter 54 of the Laws of 1915, which is the act creating the tax commission, it is specifically declared that the limitations in that section shall not apply to levies for {*215} payment of the public debt or interest thereon, and it appears to me that this indicates an intention on the part of the legislature that limitations as to taxation shall not be allowed to interfere in any way with the debt levies, but that they are to be considered as something outside of any limitations upon ordinary levies.