

## Opinion No. 15-1639

September 20, 1915

**BY:** H. S. CLANCY, Assistant Attorney General

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

**State Tax Commission, construction of language of Section 8, Chapter 54, Session Laws of 1915.**

### OPINION

{\*211} I am today in receipt of your communication of the 18th instant in which you ask for the opinion of this office as to the construction to be placed upon the language of Section 8 of Chapter 54 of the Session Laws of 1915, which requires the Commission to "ascertain whether any property subject to taxation in any county has been omitted from the assessment roll, in whole or in part," etc. You state a hypothetical case as follows:

"Merchant A returns for taxation 'Merchandise, average value for the year 1914, \$ 5,000.00.' In fact, as shown by a statement to the Commission, A has, and at the time of making the above return, had merchandise of the average value of \$ 25,000.00 instead of \$ 5,000.00. Has A undervalued his merchandise, or can the excess of \$ 25,000.00 over \$ 5,000.00 be legally considered and treated by this Commission as omitted property within the purview of Section 8 of the Tax Commission law?"

I believe that you should, in this connection, have quoted further from Section 8 of Chapter 54 the words immediately following those which you have quoted and which are "or has been listed thereon by incorrect or inadequate description." Some question might arise as to whether the Commission would be justified in raising the assessment from \$ 5,000.00 to \$ 25,000.00 in the case cited, upon the ground that it was "omitted" from the assessment rolls, but I believe that it would be justified in raising the valuation upon the ground that there was not "a correct and adequate description" of the property. {\*212} In support of this view I refer you to Section 5437 of the Codification of 1915, which provides that the property owner shall make to the assessor of the county a detailed statement of all personal property, including the average value of merchandise for the year." It clearly appears to me that the words "average value of merchandise," contained in the law last cited, are a very necessary part of the description of the property subject to taxation, and as the section of the Law of 1915 must be read in connection with Section 5437 of the Codification, I believe that in your hypothetical case you would be justified in raising the assessment upon the ground that an incorrect or inadequate description of the property had been made to the assessor.