

Opinion No. 15-1645

October 2, 1915

BY: FRANK W. CLANCY, Attorney General

TO: Hon. William G. Sargent, State Auditor, Santa Fe, New Mexico.

Taxes to be levied by State Auditor.

OPINION

{*217} You have asked my opinion as to whether the tax which you are by Section 3 of Chapter 80 of the Laws of 1915, directed to levy on all property subject to taxation in the state to realize the amounts appropriated in the first and second sections of said act, is to be a tax in addition to the limit of three mills fixed by Section 12 of Chapter 54 of the Laws of 1915 as the maximum rate "to be levied for all state purposes and uses, including the educational, penal and charitable institutions."

The answer to this question must depend upon whether the appropriations made by Chapter 80 are to be considered as made for "state purposes and uses" or not. I do not attach great importance to the fact that Chapter 80 became a law four days later than Chapter 54. All of the statutes passed at the same session should be harmonized, if possible, as though they were in one act and the expressed purpose of the legislature in Chapter 54 to limit the state tax for state purposes to three mills, ought to be considered as applicable to all appropriations for state purposes whether made before or after the adoption of Chapter 54. Were this not so, the direction to you in the general appropriation bill, which is Chapter 86 of the Laws of 1915, becoming a law on March 18, 1915, to levy a tax sufficient to produce the amounts by the act provided for and to meet payments on the public debt, would nullify the limitation to three mills contained in Chapter 54, a result as absurd and so violative of the obvious legislative intent as to indicate an impossibility of such a construction being valid.

All of the institutions for which appropriations are made in Chapter 80 are of a benevolent and charitable character, not under the control of the state, and can receive the appropriations only by virtue of the exception contained in Section 31 of Article IV of the constitution. That section prohibits any appropriation for charitable, educational or other benevolent purposes to any person or institution not under the absolute control of the state, but excepts from this prohibition the charitable institutions and hospitals {*218} for the maintenance of which appropriations were made by the legislative assembly of 1909, those institutions and hospitals being the same ones for which appropriations are made in Chapter 80 of the Laws of 1915. The state has no control whatever over any of those institutions. The making of the appropriations is not accompanied by any restriction as to the use of the money or any requirement as to its being used in any particular way. The appropriations are donations made by the state to be expended as the management of the several institutions may determine. They are not state

institutions in any proper sense of the term. Can they be considered as covered by the words "charitable institutions" in Section 12 of Chapter 54?

In that Section 12 reference is made to "educational, penal and charitable institutions." The state educational institutions are defined by Section 11 of Article XII of the Constitution and it is unnecessary here to name them. By Section 1 of Article XIV of the Constitution, the Penitentiary, the Miners' Hospital, the New Mexico Insane Asylum and the New Mexico Reform School are recognized as state institutions. Of these the Miners' Hospital and the Insane Asylum may properly be considered as state charitable institutions and the Reform School may be considered as, in part, penal, but principally as a charitable institution. Thus we have at least two state charitable institutions to which the language of Section 12 may apply. Taking all the language in the sentence together, it may be held that the mention of charitable institutions does not refer to the institutions named in Chapter 80 which are not under the control of the state in any way.

This question is not free from difficulty and different minds might take different views, and I would not venture to predict with great confidence what might be the result of any judicial proceeding as to the validity of an additional tax for the purpose of meeting the appropriations made by Chapter 80, but it is my opinion that you will be justified in making an additional special tax for the purpose of meeting those appropriations on the ground that they are not included within the language of Section 12 of Chapter 54 which refers to the rate of tax to be levied for "state purposes and uses."