Opinion No. 15-1656

October 20, 1915

BY: FRANK W. CLANCY, Attorney General

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

Interpretation of provisions of tax laws of 1915.

OPINION

*{*227}* Yesterday afternoon I received your letter of the 17th inst. in which you say that you desire my opinion on several points of difficulty in the interpretation of the provisions of Chapters 54, 74 and 79 of the Laws of 1915, which you proceed to set out in five different sub-divisions which are numbered from one to five. I will try to give you, as briefly as possible, my views as to each of these matters, taking them up in the same order in which they are stated in your letter.

1.

You first call attention to that portion of Section 12 of Chapter 54 which is as follows:

"Each of the tax levies provided by law in force at the time this act takes effect, except said special levies, shall be and hereby is proportionately reduced, so that the aggregate amount of such tax levies shall not exceed the maximum rates respectively specified in this section. Each of the said special levies on specific classes of property shall not exceed one-third of the maximum rate authorized by said laws."

As you say, while the statute provides for the proportionate reduction of the levies in force at the time the act takes effect, yet it does not specify the terms of the proportion to be used, and you suggest three possible interpretations of this provision as applied to the county levies, the first of which is that the reduction should be to one-third of the former levies because those levies were applicable to a one-third valuation of property, while the new act provides for assessment of property at its actual value. I am quite sure that the statute will not bear this construction, not only for the reason stated by you that the concluding sentence of the paragraph quoted provides that special levies on specific classes of property shall not exceed one-third of the maximum rate theretofore authorized, but also because a reduction to one-third of the former *{*228}* levies as applied to all of them would produce a result of something over ten mills without taking into account the unlimited levies for court fund and for special bridge fund. In addition to this, the object of the reduction is clearly stated in the language which indicates that after the reduction is made, the aggregate amount of tax levies shall not exceed five mills on the dollar.

In the next paragraph of your letter you say that the various levies therefore authorized, not including levies for court fund and special bridge fund, amounted to thirty-two mills, so that if we should take into consideration all of the levies, it is clear that they would have to be reduced to less than one-sixth of what they have been in order to come down to the five mill limitation. In that paragraph you say that it might be argued that the proportionate reduction could be brought about by taking five mills for the numerator of a fraction and the sum of all the levies previously authorized for the denominator, but this, as you point out, is not practicable because of the unlimited court and bridge levies which would necessarily be first deducted from the five mill limit, the remainder forming a numerator of the reduction fraction. The practical objection to this method is that among the various tax levies previously authorized, there are several which are purely discretionary with the county commissioners and which might not be necessary at all, and by reducing the total of all possible levies to the five mill limit, it is almost certain many counties would be put in such a position that the county government could not be properly administered.

This brings us to the third interpretation of the section suggested in your letter, which seems to me the only proper and practical one, which is that the numerator of the fraction to be constructed must be five mills less the levies made for bridges and the court fund, and the denominator the former maximum limits of levies which are actually made by the county commissioners in any year, excluding the levy for county high schools. In other words, if the county commissioners should find it necessary to make levies for only six of the twelve purposes specified in your letter, the proportionate reduction, after taking into account the levies for court fund and bridges, should be applied only to those six levies so that their aggregate, together with what might be levied for the court fund and bridges, will not exceed the five mill limit. I am sure that this is the only method which can be adopted and which will, at the same time, accomplish the purpose of the legislature in attempting to put a check upon possible extravagance in tax levies by the five mill limitation, and enable the county commissioners to raise the necessary funds for proper county administration.

2.

The second matter as to which you ask my opinion is, in effect, as to whether the county high school levy may be considered as a special school tax levy, and by the terms of the first paragraph of Section 12, is not to be included in the maximum rate of tax for county purposes, which is not to exceed five mills on the dollar. That tax is one for which provision was made by Section 6 of Chapter 57 of the Laws of 1912 which authorizes boards of education *{*229}* or school directors of county high schools to levy in addition to the levies then provided by law, an additional levy to be known as the county high school levy which shall not exceed two mills upon the dollar. This tax is devoted to a special purpose and does not contribute anything to the general school fund of the county or state, and I am of opinion that it should be considered as a special school tax levy and need not be included within the five mill limitation.

3.

The next subject is as to the classification of the tax for which provision is made in the first section of Chapter 79 of the Laws of 1915. That section directs the county commissioners annually to levy and collect a tax of one-half of one mill on the dollar for the maintenance of public schools, the proceeds to be paid over to the State Treasurer and to be added to the state current school fund. You ask whether this levy may not be regarded as a state levy not to be included within the three mill limit prescribed in Chapter 54 for state levies. The fact that Chapter 79 became a law some days after Chapter 54, I do not think is of great importance, although it is worthy of some consideration in the examination of this question and might have a deciding effect if the question can be considered as otherwise doubtful. I am of opinion, however, even if this section had been included in Chapter 54 and these various statutes are to be read together as if they were all enacted at the same time and still be given effect if possible, that this is clearly a state tax and that it must be considered as outside of the general three mill limit for state purposes. By statute, the ordinary state taxes are levied by the State Auditor while by this section the legislature directs the county commissioners to levy this tax, thus differentiating it from the other taxes to be levied by the State Auditor. Of course, it is within the legislative power to direct who shall make any levy of state taxes, or any other taxes for that matter. I can see no possible reason to doubt that this is a state tax as it is payable into the state treasury and goes into a state fund in the hands of the State Treasurer.

4.

Your next question is as to the construction of the first section of Chapter 74 of the Laws of 1915, which is as follows:

"No county, city, town, village or school district shall in any year make tax levies which will in the aggregate produce an amount more than five per cent in excess of the amount produced by tax levies therein during the year preceding except as hereinafter provided."

You say that there are two possible interpretations of this provision, the first being that the word "produced" means taxes actually collected during the preceding year, or, second, that the word may have been used in the mathematical sense of multiplied or extended.

I agree fully with your views that the first interpretation would lead to such difficulties as to make it almost impossible of practical *{*230}* application. At the proper time for making county levies, there is always a considerable part of the collectible taxes levied in the preceding year still uncollected, and this amount varies from year to year and the collections for the preceding year might at times greatly exceed the average amount collected from such levies on account of the collection of large amounts of long delinquent taxes which is not at all an unusual thing. Uncertainty and confusion would thus be brought about while by adopting the other construction of measuring the amount of taxes produced by the mathematical application of the rates to the total valuation in the county, a statute would be had, easy of application and which would undoubtedly

accomplish the legislative purpose. As you point out, if the attempt were made to measure the levies by the actual collections, it might happen that instead of allowing for a possible increase from year to year, the result reached would be an absolute decrease of levies.

5.

The last subject to which you call attention is as to the construction of the first section of Chapter 74 with regard to the computation of the five per cent which is permissible in excess of the amount produced by tax levies during the preceding year. You call attention to the fact that Chapter 79 provides that all school levies, except that for the maintenance of the county high school, shall be made by the county commissioners, school maintenance being a charge against the entire county while the levy to pay for school buildings, equipment and district indebtedness is a charge against the several districts. I agree with you that the school district levy referred to in that section, is entirely abolished by the provisions of Chapter 79, as under that last cited chapter there is no possible levy which can be made by a school district. When Chapter 74 was drafted, undoubtedly there was in mind the special district levies, which, with the approval of the county commissioners, could be made in rural districts up to fifteen mills and in municipal districts to twenty mills, but in view of Chapter 79 the words "school district' in Chapter 74 become meaningless.

You ask, in substance, whether, for the purpose of measuring the five per cent increase in levies of last year in the county, you should compute that increase in the aggregate of all levies made by the county commissioners, and under the authority of the county, including the county high school tax as compared with the sum of county, county school, county high school and school district levies of 1914. I am quite satisfied that we must base this measurement of the five per cent excess upon the aggregate of all levies made last year and cannot measure it by the amounts of particular levies for particular purposes. In other words, under the provisions of Chapter 74 the prohibition is not as to any one tax levy, but is as to the aggregate of all the county levies which must not produce more than five per cent in excess of the amount produced by tax levies last year. In order to give effect to the legislative intent, and at the same time to make some allowance for increasing needs, it appears that it will be necessary to take into account the varying school district levies of last year as well as the general county levies *{*231}* of last year. Under the new system, the county is to provide for all school expenses by general county taxes with the one exception already noted, of district levies for building and equipment of school houses, and for district indebtedness, which the county commissioners are authorized to make by Section 6 of Chapter 79. The new general county school tax takes the place of the former district taxes, and for that reason, the district levies of last year must figure in the computation of the aggregate over which only five per cent increase is allowable.