

Opinion No. 15-1652

October 11, 1915

BY: FRANK W. CLANCY, Attorney General

TO: Mr. C. E. Thomas, Alamogordo, New Mexico.

Special road tax levy.

OPINION

{*222} Your letter of the 7th inst. reached Santa Fe yesterday, Sunday, and I take the first moment I have had to answer you. You say that your County Board have been informed that an opinion rendered by me in the matter of tax levies, was to the effect that any board desiring to make the special road levy authorized by Chapter 119 of the Laws of 1909, must be to the full amount of the tax as authorized by that act, and that it was not discretionary with the board to levy at any rate less than the maximum authorized, "that is to say, that it would now be necessary to levy one and 66-2-3 hundredths mills, or make no levy at all." You say that the board desires to be advised about this at my earliest convenience.

The only opinion as far as I can recall which I have given in which any reference was made to this tax, is in a letter addressed to the State Tax Commission which the Secretary of the Commission printed and distributed to all county clerks, commissioners and assessors, of which I have no doubt you have a copy in your office. In that letter I did not indicate what the commissioners must levy under the authority for this special road tax, and I do not know how anyone could reach the figure of one and 66-2-3 hundredths mills, which is one-third of the five mills originally authorized. The provision in the new statute merely is that all tax levies provided by law in force at the time that the new act takes effect, must be proportionately reduced so that the total shall not exceed the limit of five mills. As I pointed out in the letter to the Tax Commission, it is difficult literally to apply this provision about the proportionate reduction because it clearly cannot be applied to the levy for the court fund as to which there is no limit in the statute. After making the levy for the court fund, all other taxes must be reduced so that, together with the court fund levy, the total shall not exceed the five mill limit.

As a practical question, if the county board should make a levy for this special road tax in such amount as it deems necessary and advisable, no one would make any complaint as long as the aggregate of all the levies did not exceed the five mill limit, and in view of the practical difficulty of making the proportionate reduction mentioned in the statute, I do not see how anyone could be in position successfully to complain, no matter what the rate fixed by the county commissioners.

I will enclose herewith a copy of the printed letter above referred to for fear you may not have one.