

Opinion No. 15-1660

October 25, 1915

BY: FRANK W. CLANCY, Attorney General

TO: Mr. Hiram M. Dow, City Attorney, Roswell, N. M.

Tax levy for the maintenance of a city library must be within the three mill limit fixed by Chapter 54 of the Laws of 1915.

OPINION

{*233} I have your letter of the 22nd inst. and have given it very careful consideration. I have tried in every way possible to convince myself that your city could make some sort of a levy for the maintenance of the library, outside of the limit of three mills fixed in Section 12 of Chapter 54 of the Laws of 1915 as the maximum rate of tax to be levied for city purposes or uses, but without success. I am unable to see how the obligation to maintain the library, in accordance with the contract with Mr. Carnegie can be considered as creating a public debt, within the meaning of the last paragraph of said Section 12, which declares that the "limitations shall not apply to levies for payment of the public debt or interest thereon." The language used, especially in view of the use of the word "interest," indicates that this could not fall within that exception any more than an obligation to pay salaries to county officers which are fixed by law.

I tried to convince myself that this legislation might be considered as impairing the obligation of a contract unless some additional levy were permitted, but this idea is not applicable because the obligation still remains, and the answer to any argument in that direction would be that the legislature has decided that the levy of three mills would be sufficient to provide for any necessary payment under such a contract.

As a matter of fact, of course, we know that legislative attention was not directed to this case and that if it had been, some provision would have been made to enable your city to provide for library maintenance, and I have no doubt that some such provision will be made as soon as we have another session of the legislature. From what we know of the public spirit exhibited by the citizens of Roswell in the past, it is easy to imagine that so far as may be necessary, they will make provision for the maintenance of the library and look to the legislature for some enactment by means of which they can be reimbursed for any such outlay.