

Opinion No. 17-1974

April 10, 1917

BY: HARRY L. PATTON, Attorney General

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

The Two Mill Levy Authorized by the Highway Act of 1917 Is Limited By Section 12, Chapter 54, Laws of 1915, and Also By Chapter 74, Laws of 1915.

OPINION

I have your letter of recent date in which you ask for an opinion upon various phases of the act of the last legislature, being entitled, "An Act Relating to Public Highways and Bridges," approved March 9, 1917.

You first inquire, "Is a tax levy of two mills authorized by Section 24 of the act, limited by the provisions of Section 12 of Chapter 54 of the Laws of 1915, or can the county commissioners make the levy of the full two mills, even though the same cause the total tax levy for that year in such county to exceed five mills for all county purposes? Section 12 of Chapter 54, Laws of 1915, reads as follows:

"The maximum rate of tax to be levied for all state purposes and uses, including the educational, penal and charitable institutions, shall not exceed three mills on the dollar of the assessed valuation of all property subject to taxation in the State. The maximum rate of tax to be levied for all county purposes and uses, excepting special school tax levies, special levies on specific classes of property, shall not exceed five mills on the dollar. The maximum rate of tax to be levied for city, town or village purposes or uses, shall not exceed three mills on the dollar.

"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.

"Special school tax levies may be made in accordance with law not exceeding five mills on the dollar. All tangible property shall be assessed and taxed upon its actual value.

"The foregoing limitations shall not apply to levies for payment of the public debt or interest thereon."

Section 24 of the State Highway Act reads in part as follows:

"For the purpose of enabling the boards of county commissioners to carry out without delay the provisions of this act, such boards are hereby authorized and empowered to cause to be levied and collected a tax of not exceeding two mills on each dollar of taxable property situate within their respective counties, and such tax may be annually levied whenever necessary for carrying out the provisions of this act."

To hold that the levy of two mills authorized by Section 24 of the act could be levied in addition to the five mills limitation imposed by Section 12 of Chapter 54, Laws of 1915, would be in effect holding that the latter act was repealed in so far as it related to the levy of taxes for county highway purposes, as provided in the State Highway Act. The State Highway Act contains no general repealing clause. Section 25 of the act specifically repeals Sections 2640 to 2651, inclusive, and Sections 2631 and 2636, Code of 1915, but there is no specific repeal of Section 12, Chapter 54, Laws of 1915. If Section 12, Chapter 54, Laws of 1915, or any part thereof, is repealed by the State Highway Act, it must be by an implied and not an express repeal. The repeal of statutes by implication is not favored by the courts. The presumption is always against the intention to repeal, where express terms are not used. To justify the presumption of the intention to repeal one statute by another, either the two statutes must be irreconcilable, or the attempt to effect the repeal must be otherwise clearly expressed. Section 12, Chapter 54, Laws of 1915, and the State Highway Act are not irreconcilable and the intent of the legislature to effect a repeal of the 1915 act is not otherwise clearly expressed.

Section 15 of the State Highway Act provides for the levy by the State of a tax not to exceed one mill on the dollar. In the same section we find the following language:

"The tax levy by this section authorized shall be and is excepted from the provisions of Section 12 of Chapter 54 of the Session Laws of the State of New Mexico for the year 1915."

While there can be no doubt as to the intention of the legislature to except the state tax levy from the operation of the law of 1915, there is no such expression in the act with reference to the county levy mentioned in Section 24 of the act. This calls for the application of a familiar maxim of the law, which is as follows:

"The expression of one thing is the exclusion of another."

It has been said that no maxim of the law is of more general and uniform application; and it is never more applicable than in the construction and interpretation of statutes. I can conceive of no case in which this maxim more clearly applies than in the construction of this statute. The legislature unmistakably said that the state levy of one mill was excepted from the provisions of the Act of 1915. It could have easily said the same thing with reference to the county levy of two mills. It did not do so. According to the rule of construction, which I have just stated, when the legislature expressly said that the levy of one mill for state purposes was excepted from the provisions of the Act of 1915, it likewise said that the levy of two mills for county purposes was not excepted

from the Act of 1915. My conclusion is that the two mills tax, which may be levied by the county under authority of this act, is limited to and must be confined within the limit of five mills, as prescribed by Section 12, Chapter 54, Laws of 1915.

Your second question is as follows: "Is the said tax levy of two mills limited by the provisions of Chapter 74, under the Session Laws of 1915?" Chapter 74 of said act is as follows:

"Sec. 1. 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.

"Sec. 2. In case the amount desired to be produced by tax levies is more than five per cent. greater than the amount produced in the year preceding, such fact shall be set forth in the form of a special request and filed with the State Tax Commission. In case the State Tax Commission approves such proposed increase it shall specifically authorize the same; if it disapproves, it shall so state with its reasons therefor, and its decision shall be final."

For the reasons stated in answer to your first question, I am of the opinion that the county levy of two mills is limited by the provisions of said Chapter 74, Laws of 1915. You argue in your letter that in order to make the new highway law effective the levies in many of the counties must necessarily exceed the five per cent. increase provided by Chapter 74; otherwise many of the counties will be unable to avail themselves of federal and state aid in the construction of roads, provided by the State Highway Act and the Act of Congress. If such increase is necessary, the counties are not without their remedy and I cite you to the steps which may be taken to increase the amount of revenue under the provisions of Section 2 of Chapter 74 as quoted.

In answer to your third and fourth questions, I am of the opinion that the county commissioners are still authorized to make the special levies provided by Sections 1305, 2645 and 2673, Code of 1915, and agree with you that the three last mentioned levies are subject to the limitations of Section 12, Chapter 54, and Chapter 74, Laws of 1915.

I further state that the form of certificates for anticipating proceeds of levies, as provided by Section 16 of the act approved March 9, 1917, as submitted by you to me, meets with my approval.