

**Opinion No. 19-2389**

October 10, 1919

**BY:** HARRY S. BOWMAN, Assistant Attorney General

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

Assessment of Timber Lands for Taxes.

**OPINION**

Referring to your letter of the 6th instant, requesting an opinion from this office relative to the method to be adopted by the Commission in the assessment of timber and timber lands, and making specific inquiry as to the right of the commission to assess timber separate and apart from the land upon which the same is growing, we wish to advise you as follows:

There are no statutory provisions regarding this subject, and therefore we must base our conclusions upon the present existing taxing laws of the state and such aid as we can derive from cases wherein this subject has been passed upon by courts of other states.

Section 1 of Article VIII of the Constitution of New Mexico provides that,

"Taxes levied upon tangible property shall be in proportion to the value thereof, and taxes shall be equal and uniform upon subjects of taxation of the same class."

Timber and timber lands would fall within the definition of "tangible property," and therefore the tax must be levied in proportion to the value. In some States, the question arose as to the right to tax lands as timber lands, and in most of these cases it was held that the land could be so assessed. In these cases an attempt to exclude the timber from the value of the property for taxation purposes was unsuccessful and the land and timber was assessed together. See

French vs. Town of Lyon, 77 N. H. 63; 86 Atl. 823.

In the only case, however, which I find wherein the question was directly at issue regarding the right to assess timber separate and apart from the land, because the land and timber were separately owned, it was held that such an assessment was proper.

Gaston vs. Pine Lumber Co., 110 Miss. 165; 69 So. 668.

Since there is no special legislation in this state regulating the method of assessment of timber lands, and in view of the last case above mentioned, we are of the opinion that it

may be separately assessed where it is owned by persons other than those owning the land upon which it stands.

We are returning to you herewith the file of papers enclosed with your letter first above mentioned.

Trusting that the foregoing fully answers your inquiry, we are