

Opinion No. 20-2505

March 4, 1920

BY: H. S. BOWMAN, Assistant Attorney General

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

Intangible Values to Be Considered in Arriving at Value of Railroads For Taxation Purposes.

OPINION

Under date of November 10th, 1919, we wrote you in reply to your oral inquiry for an opinion regarding the authority of the Commission to take into consideration, in determining the value of a railroad for taxation purposes, the net earnings of the road and any intangible property which it might own. In that opinion we expressed the view that by reason of the language of Section 4 of Chapter 54, Laws of 1915, wherein the Commission was limited in its determination of the value of a railroad property to the "actual value of all property belonging to railroads," that intangible values, net earnings, etc., could not be considered.

As you will remember, this opinion was rendered without any investigation, as the writer was then about to leave Santa Fe for Gallup, and he felt that the matter required further investigation.

We have given this question considerable study and thought since the letter above mentioned, and have changed our views, especially after considering certain cases wherein was involved this very question. Of course, the peculiar wording of the above named statute has considerable weight in determining what should be considered by the Tax Commission in arriving at the actual value of property belonging to railroads; but in spite of this peculiarity of wording, we are now of the opinion that there is authority for the use by the taxing body of almost all of the elements that may enter into the "value" thereof. This may include, not only physical valuation, but outstanding bonded indebtedness, rental value, net earnings and any peculiar facts in each particular case which might affect the value of the road as a public utility property. In support of these views we would suggest for your attention the reading of the following cases:

State vs. Nevada Central Railroad Company, 28 Nev. 186, 113 Am. St. Rep. 834.

State vs. Illinois Central Railroad, 27 Ill. 64, 79 Am Dec. 396.

Oregon Railway Company vs. Jackson, 35 Ore. 589. 64 Pac. 307.

Central Railroad Company vs. State Assessors, 49 N. J. L., 1.