

## Opinion No. 21-2879

March 31, 1921

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

**TO:** Hon. Leslie A. Gillett, State Engineer, Santa Fe, New Mexico.

**Status Road Tax in Socorro and Catron Counties.**

### OPINION

{\*36} In reply to your oral request for an opinion from this office relative to the status of the road tax levied by the County of Socorro under the provisions of Chapter 4 of the Extraordinary Session of 1920, insofar as the same applies to the new county of Catron, I would advise you that the matter presents many difficulties which have required considerable investigation and research upon the part of the writer.

Chapter 4, above mentioned, provides that the Board of County Commissioners of the County of Socorro shall levy a tax of not to {\*37} exceed three mills on each dollar of taxable property in the said county during the years 1920, 1921 and 1922 for the purpose of constructing and maintaining a road, part of which, as I understand it, is now within the boundaries of the recently created county of Catron.

No provision is made in the Act creating Catron County for the levy of the tax by the County Commissioners of that county, nor is there anything which impliedly directs the levy of that tax for the years yet remaining. The general rule regarding the assumption of indebtedness and obligations by newly created counties is stated in 7 R. C.L. at page 930, Sec. 9.

It is provided that the part of the county remaining after a new county has been created retains all the property, powers, rights and privileges, and remains subject to all the obligations and duties, unless some express provision to the contrary be made by the Act authorizing the separation. In 11 Cyc. page 354, the general rule is thus stated:

'In the absence of express legislative or constitutional provision as to rights and liabilities, the general rule is that the new county will be entirely free of any of the burdens of the counties from which its territory was taken. No liability attaches because of the former relations of the inhabitants of the respective counties.'

In the case of Gilliam County vs. Wasco County, 14 Ore. 525, 13 Pac. 324, it was held that a tax was a debt within the meaning of the general rule, and therefore when a county was divided the old county should be compelled to pay the whole of the state levy charged upon the county at the time the division took place, and in the case of Miller v. Pineville, 121 Ky. 811, 89 S.W. 261, it was held that property which was within the corporate limits of a city at the time of issuance of bonds, but which was at the time

the suit was tried, outside the corporation by reason of the reduction of its limits, could not be assessed for the purpose of aiding in the payment of the bonds.

There are other cases holding that neither the fact that a portion of the territory of the township remained in the old county, nor the fact that new territory was added to the township which was not a part of it at the time of the issuance of bonds, affected its liability thereon. It was further held in the case of *Planters & Savings Bank v. Huitt Township*, 132 Fed. 627, that the liability of the township upon such bonds was not affected by the mere fact that it was wholly transferred from the old county into a new county.

From the foregoing it would appear as if the county of Catron assumes no liability to levy the tax provided by Chapter 4 of the Extraordinary Session of 1920, and that in order to compel that county to levy the tax, if such a levy would exceed the statutory limitations for county levies, that an Act of the legislature would be necessary.