

Opinion No. 22-3596

October 5, 1922

BY: HARRY S. BOWMAN, Attorney General

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

Employment Deputy Assessors.

OPINION

{*179} In reply to your oral request for an opinion regarding the right of your Commission to exercise a discretion in the matter of the authorizing of a levy in counties to provide for the additional expenditure in assessor's offices of the sum of \$ 2,400.00, or a portion thereof, as provided for in Section 236, Chapter 133, Laws of 1921, (the Tax Code), I beg to advise you:

The above mentioned section authorizes an assessor to appoint deputies to assist in assessing the property of the county, and further provides for the payment of the sum of \$ 1,200.00 for salary of such assistants, and a maximum of \$ 1,200.00 more for traveling and other expenses.

The third paragraph of the section uses the following language:

"The assessor shall also be allowed as expenses of his office the sum of \$ 1,200.00 for the employment of deputies," etc.

It will be noted that the word "shall" is employed, and it might be argued that it is mandatory, therefore, that said sum of \$ 1,200.00 shall be allowed to the assessor for such expenses.

Section 3 of Chapter 188 of the Laws of 1921, (the County Budget Act), provides, among other things, that the Tax Commission shall have the power to approve or disapprove, in whole or in part, or to amend or change the budget estimates provided for therein, and that all approvals or disapprovals or amendments or changes shall be made matters of record by the Commission.

Section 4 of the Act provides that after such amended or changed budget estimates are properly certified to the State Traveling Auditor and the county clerks and county treasurers of the counties, they shall be binding upon all county officials, and that no claims shall be allowed by county commissioners in excess of such budget estimates, nor should the county treasurer pay any warrants in excess thereof.

{*180} Reading the two acts together, it is apparent that it was the intent of the legislature to grant to the Tax Commission mandatory and supervisory powers and

jurisdiction over the county budgets and even though the county budgets should include therein proposed levies to raise funds for additional expenses for the assessors as provided for in Section 236 of Chapter 133, such items might be amended or changed by the Commission at its discretion.

It is also possible that the Tax Commission would have authority to increase in said budgets, proposed levies which would not produce an amount equal to the maximum sum mentioned in Section 236.

I am therefore, of the opinion that the Commission has authority to change or revise or amend the amounts contained in the county budgets for the payment of deputy assessors as authorized by Section 236.