

Opinion No. 22-3603

October 12, 1922

BY: HARRY S. BOWMAN, Attorney General

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

Reduction Budget Estimates Counties Where Taxable Values Have Fallen Below Last Classification for Salary Purposes.

OPINION

{*181} The question submitted by your Commission in your letter of September 30th as to the power of the Commission to reduce the budgets of those counties which, by reason of the creation of new counties out of a part thereof, or by reason of reduction in valuations of property, have been reduced to a classification lower than that in which said counties were placed by the State Auditor in the year 1921, for the purpose of the fixing of salaries of county officials as prescribed by Section 19, Chapter 12, Laws 1915 (the County Salary Act), is one of more than ordinary difficulty of solution, and for the reason that it has required considerable thought and investigation, the inquiry as submitted has not been more promptly answered.

The question resolves itself into two divisions. First, the authority of the Commission to reduce the items in the annual budget providing funds for the payment of the salaries of county officials in the counties, the area of which has been decreased by reason of the creation of new counties out of parts of the original counties, and second, the authority of the Commission to reduce the budget allowances for salaries of county officials in those counties, the valuation of the property of which, has been reduced owing to decreases in value of the property within the boundaries of such counties.

The only law governing the classification of counties for the purpose of determining the salaries to be received by county officials is contained in Chapter 12, Session Laws 1915. Any other laws providing for the classification of counties, enacted prior to statehood, could not be held to apply to the fixing of salaries of county officials because, during territorial days, county officials were paid, not by salary but by fees earned in the various offices, and furthermore, the Classification Act of 1897 (Chapter 60, Laws of 1897), was held to be unconstitutional by the Supreme Court, and the classification provided for in Chapter 11 of the Laws of 1899, as amended by Chapter 8 of the Laws of 1909 was passed for bridge purposes only.

The provisions of Chapter 60, Laws 1905, providing a classification of counties, applies to the salaries only, of certain county officials, to-wit, county commissioners, probate judges, probate clerks and county superintendents of schools, these being the officers whose salaries were not based upon the fees received in the office for the reason that no fees were received in such offices, with the exception of the office of probate clerk.

We have entered into this preliminary discussion of the laws providing classification of counties for the purpose of showing that in the event the provisions of Section 19, Chapter 12, Laws 1915, should be declared to be unconstitutional and void because they provide for an arbitrary classification, which classification the courts will {^{*}182} not sustain, then there would be no law providing for the classification of counties for the purpose of determining salaries to be paid to various county officials. At least, there would be no law which would provide a classification for the determination of salaries of county officials other than those that are named in Chapter 60 of the Laws of 1905; and it is very doubtful if the classification provided for in that act could be held to apply even to the officials mentioned therein, in view of the provisions of Section 1, Article X of the Constitution, which requires the legislature to classify counties and fix salaries for county officials.

In the cases of Delgado vs. Romero, 17 N.M. 81, 124 Pac. 659, Ward vs. Romero, 17 N.M. 88, 125 Pac. 617, and Herbert vs. Board of County Commissioners, 134 Pac. 204, it was held that the compensation of county officers was dependent upon the enactment by the legislature of a salary law, and that no compensation could be received by such officers until the legislature had enacted such a law. It requires only one step further to hold that the Constitution requires a classification of counties before the payment of salaries can be made to county officials within the contemplation of the constitutional provision.

Section 19, Chapter 12, Laws 1915, provides for a classification of counties, not arbitrary or fixed, but elastic, at least to a certain degree. Counties are to be classified every four years upon the basis of the assessed valuation for the preceding year. There is no provision however, for counties whose taxable valuations are changed, or of counties that are created between the time of the fixing of the said valuations as prescribed in the act and the expiration of the four year period when the new classification is to be made.

Whether the failure to so provide a method to determine the classification of counties, the assessed valuation of which changes, or new counties created by legislature, would cause the said act to be unconstitutional and void, I shall not attempt to determine, for the reason that if the holding should be that the act is not valid, your Commission would be in no better position than it is under the provisions of the present act.

You, therefore, are confronted with this situation: New counties are created without any provision for their classification so as to furnish a basis for the payment of the salaries of the county officials. Taxable valuations of other counties are decreased, either by reason of the creation of new counties or by reason of the actual decrease in valuation of property, so that it will be impossible to raise funds sufficient to pay the county officials upon the basis of the classification prescribed by the State Auditor under the provisions of Section 19, Chapter 12, Laws 1915.

Your Commission is charged with the specific duty of amending and altering the budget estimates submitted by the various counties so that the revenue produced will pay the expenditures to be made during the budget year.

Your Commission, however, nowhere is authorized to determine the classification of counties for the purpose of fixing the salaries of county officials. That duty is one imposed only upon the State Auditor, and he has no authority to change such classifications except every four years, beginning with the year 1917. The classifications fixed by him in the year 1921 cannot be changed under the present laws until the year 1925. In the meantime, the conditions above outlined prevail.

The foregoing observations indicate the difficulty in arriving at {*183} a conclusion upon which I should request your Commission to act. Views expressed by me might not be sustained by a court, and which ever view I should take might result in confusion and damage in some of the counties.

I suggest, therefore, that the Commission adopt a resolution which will immediately place the question before the courts for consideration and determination and, in my opinion, the proper method to accomplish this purpose would be for the Commission to reduce the budget allowances for salary for county officials to an amount authorized by Chapter 12, Laws of 1915, for counties in the classification in which they now fall in accordance with the assessed valuation of the present year. By adopting this course, the Commission will be following the latest act, which provides for the alteration and amendment of the budgets by the Commission so as to produce the funds necessary to pay the current claims against and indebtedness of the various counties.

I cannot bring myself to believe that the powers granted to the Tax Commission in Sections 3 and 4 of Chapter 188 of the Laws of 1921 (the County Budget Law), to amend or change the budget estimates as submitted, require the Commission to approve estimates for salaries of county officials which, under no possible circumstance, can be raised by taxation in those counties where the valuations have been so reduced as to make it impossible to raise sufficient funds to cover such budget estimates.

On the other hand, there is always the rule to be kept in mind that the law does not favor the amendment or repeal of statutes by implication, and that if statutes can stand by any reasonable construction, the courts will not attempt to declare a former act to be superseded or altered by a later one.

For these reasons and the others heretofore mentioned, I am making the suggestions above contained. My advice would be to adopt the procedure above outlined and to make arrangements for some person who has the proper standing to immediately take the matter into court so as to obtain a determination of the question prior to the election to be held on November 7th. If the matter is not disposed of before that time, other complications might arise, and in making this suggestion, I have in mind that

constitutional provision which prohibits the increase or decrease of the salary of an official during his term of office.

Many courts hold that the change cannot be made after the election, and I understand it is the desire of your Commission to have the change of salaries become effective with the incumbency of the new county officials on January 1st, 1923.

I am returning herewith letter from Mr. Luis E. Armijo, District Attorney of the Fourth Judicial District, and a petition from the residents of Mora County, both relating to the matter mentioned, and both of which were left in my office subsequent to the receipt of the letter from your Commission.