

Opinion No. 23-3689

April 6, 1923

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

Compensation of County Officers May Not be Diminished During Their Term of Office.

OPINION

{*37} We quote your inquiry as follows:

"Prior to enactment of law doing away with extra compensation for assessors' expenses in assessing property, county commissioners made agreement with assessor to pay actual expenses in making assessments for this year. Will new law affect this contract in any way or can assessor act under it?"

Your question is one of state-wide importance and this office has given it the reasonably full and careful consideration consistent with the limited time we have when a great number of other pressing questions and other matters of official business are demanding our immediate attention.

The situation presented by the passage and approval of House Bill No. 196 is interesting if not somewhat serious. The act purports to repeal Sec. 236, Chap. 133, S. L. 1921, and said Section 236 repealed, in many important particulars, at least, the provisions of Chap. 12 S. L. 1915, relating to expenses and deputies for assessors. The repeal of the 1921 act will not revive the act of 1915. See Sec. 5426 N.M. Statutes Annotated Codification of 1915. If House Bill No. 196 were held constitutional, the effect of the law might quite seriously impede the making of assessments.

{*38} Whether constitutional or otherwise, we think its provisions may not affect present incumbents, and the authorities should proceed under and be guided by the provisions of said Section 236 of Chapter 133 of the Session Laws of 1921.

The foregoing is probably sufficient to indicate the opinion of this office, but the commission will probably wish to know something of our reasons for reaching this conclusion:

The State Constitution at Sec. 27, Art. 4, provides:

"No law shall be enacted giving any extra compensation to any public officer, servant, agent or contractor after services are rendered or contract made; nor shall the compensation of any officer be increased or diminished during his term of office, except as otherwise provided in this constitution."

Said House Bill No. 196 purports to repeal Sec. 236 Chap. 133 S. L. of 1921. By such repeal the compensation provided for assessors is diminished. The section of the constitution just cited will not permit this.

In coming to this conclusion, we are not unmindful of the fact that there are authorities which seemingly held to the contrary view. We have examined these cases and have decided they present no safe rule to follow in view of our constitution, taken as a whole, and various decisions of our Supreme Court. The principal case holding such contrary view is Douglas County vs. Timme, 49 N.M. 266 (Neb.). We quote from this case the following:

"It is claimed by the plaintiff in error that the legislature had no power to increase the compensation of the county commissioner during his term of office; that he is entitled to the compensation fixed by law at the time of his election, and when he entered upon the duties of his office. This contention is based upon Section 16, Art. 3, of the Constitution, which provides, in substance, that the compensation of a public officer will not be increased or diminished during his term of office. That provision, in our view, applies alone to those offices which were created by the constitution."

We have compared our constitution with that of Nebraska in essential particulars taking into consideration various rulings of our Supreme Court. While the Nebraska case would be persuasive, at least, in that jurisdiction, in view of the Nebraska constitution and local interpretation of the same, we deem it not advisable to follow it here.

Some question may arise as to whether or not a deputy assessor is a "public officer." * *
* A deputy assessor, under the statute, being required to take an official oath, under the authorities brings him within the designation "public officer" or "county officer." State ex rel. Baca vs. Montoya, 20 N.M. 110.

The only other question we deem worthy of consideration is whether or not the section of the constitution hereinbefore quoted applies to all "county officers."

Our state Supreme Court, in many of its decisions construing different phases of the constitution, seems to concede that the word "officer," unless otherwise qualified, includes "county officers." Sec. 2, Art. 20, Constitution, provides: "Every officer, unless removed, shall hold his office until his successor has duly qualified." The {39} word "officer" as here used would mean "state officers" only, if the same word, as used in said Sec. 27, Art. 4, should be so restricted. A county officer was the subject of the controversy in state ex rel. Harvey vs. Medler, 19 N.M. 252, and the court evidently considered said Sec. 2 as applicable to such officers in that case. The same is true of the Haymaker Case, 22 N.M. 400, where the court considered "officer" as used in said Sec. 2 as applicable even to the clerk of a city board of education.

In the case of Dorman vs. Sargent, 150 Pac., 1023 (N. M.), our Supreme Court quotes, with approval, from a Wyoming case, giving reasons for such provisions, as follows:

"There is a general rule prescribed that no law shall increase or diminish the salary of any public officer after his election or appointment. This was intended to secure official independence, and to prevent the legislature from being assailed by the demands of importunate officials, to the detriment of public business. The stability and permanence of the salaries of public officials were guaranteed by the constitution, after once fixed, secure during the official term from legislative control. * * * Although some courts seem to distinguish between the salaries fixed by the constitution and those fixed by an unrepealed statute, it seems that this is a distinction more nice than wise. In either case the people have given their assent to the measure -- in one method by their organic law, which they have accepted, adopted and ratified by their votes; and in the other by their representatives in the legislature. The salaries are to be fixed by law, and all such officers, whether of the state, county, city, town, or school, shall be paid, fixed and definite salaries."

The next preceding quotation gives the reasons, usually presented, for provisions such as are found in said Sec. 27. We have been unable to find any satisfactory explanation offered as to why this section may not apply to county officers.

Sec. 4, Art. 22 provides:

"All laws of the territory of New Mexico in force at the time of its admission into the union as a state, not inconsistent with this constitution, shall be and remain in force as the laws of the state until they expire by their own limitation, or are altered or repealed; and all rights, actions, claims, contracts, liabilities and obligations, shall continue and remain unaffected by the change in the form of government."

The foregoing evidently contemplates county officers and all laws relating thereto. So, in view of the provisions of our constitution, taken as a whole, we see no reasonable way of restricting "officer," as used in said Section 27, to "state" officer.