

Opinion No. 24-3747

January 15, 1924

BY: JOHN W. ARMSTRONG, Assistant Attorney General

TO: Requested by: Hon. Juan N. Vigil, State Auditor, Santa Fe, New Mexico.

Classification of Counties, Fixed by State Auditor of 1921, may not be Changed Prior to January 1, 1925.

OPINION

{*114} We have your inquiry as follows:

"In accordance with Sec. 2, H. B. 108 of the Sixth Legislature of the State of New Mexico I determined the classification of the various Counties of the State and notified the Board of County Commissioners of each County of the class in which their County was placed to determine and fix the salaries of County Officers for the years 1923 and 1924.

Since that time I have been advised that the Supreme Court of the State of New Mexico has declared this law unconstitutional.

Will you kindly give me your opinion if it is my duty or if I have the authority to advise the various boards of County Commissioners of this State the action of the Supreme Court. And should I advise them that the classifications of all counties remain the same as made by the State Auditor in the year 1921.

The classification of counties, for the purpose of fixing salaries of county officers, remains the same as that fixed by the State Auditor in 1921. The 1921 classification will remain in full force and effect for the purpose of determining such salaries until the close of the current year 1924. It, therefore, would be advisable that you notify Boards of County Commissioners to disregard the classification you certified out in conformity with Sec. 2, Chap. 49, S. L. 1923.

The salaries of county officers may not be increased or diminished by any classification prior to January 1, 1925.

Several months ago, in the Supreme Court case of R. F. Love v. County Commissioners of Lea County, Mr. Justice Botts, in delivering the opinion of the court, said:

"The salary of the county officers of Lea County having been definitely fixed under the Act of 1915, the State Tax Commission was without power to reduce the budget estimate for the payment of these salaries below the amount required to pay the

salaries so fixed. * * * The Legislature has decided that each classification, when made, should remain as fixed for a period of four years and has expressed that determination in plain language.

{*115} In another recent decision of the Supreme Court, State v. Board of County Commissioners of Sierra County, under date of Jan. 4, 1924, Mr. Justice Bratton, speaking for the court, said:

Sec. 2 of Chap. 49, S. L. 1923, which provides that within thirty days after such Act takes effect, the State Auditor shall classify the several counties of the state, using therefor the existing valuation of such counties as finally fixed for the year 1922, and that such classification shall determine the salaries of several county officers during the years 1923 and 1924, is void as to such officer when serving, where it results in either increasing or diminishing their compensation during their term of office.

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