

Opinion No. 26-SUPPLEMENTAL OPINION NO. 3885

June 15, 1926

BY: ROBERT C. DOW, Assistant Attorney General

TO: Hon. J. E. Owens, Chief Tax Commissioner, Santa Fe, New Mexico.

This Office is in receipt of your request for an opinion relative to the limitations of indebtedness which may be incurred by the different counties of New Mexico under our present tax laws. § 13 of Article 9 of the Constitution of New Mexico prescribes a limitation of 4%; the Legislature of New Mexico would have authority to prescribe any limitation less than 4%, but any act of the Legislature fixing a limitation more than 4% would be unconstitutional.

§ 13, Chapter 54 of the Laws of 1915, is as follows:

"No county or incorporated city, town or village, shall ever become indebted to an amount in the aggregate including existing indebtedness, exceeding one and one-third per centum on the actual value of the taxable property within such county, city, town or village, as shown by the last preceding assessment roll, and all bonds and obligations issued or contracted in excess of such amount, after the time this act shall go into effect, shall be void; but such limitation shall not apply to indebtedness for the construction or purchase of a system for supplying water or a sewer system for such city, town or village."

The above section was included in an Act which created the State Tax Commission, and, among other things, limited the indebtedness of counties, cities, towns and villages. The above section of the 1915 law was amended by Chapter 68 of the Laws of 1919, such amendment reading as follows:

"No county or incorporated city, town, or village shall ever become indebted to an amount in the aggregate including existing indebtedness, exceeding one and one-third per centum on the actual value of the taxable property within such county, city, town or village, as shown by the last preceding assessment roll, and all bonds and obligations issued or contracted in excess of such amount, after the time this act shall go into effect shall be void; but such limitation shall not apply to indebtedness for the construction or purchase of a system for supplying water or a sewer system for such city, town, or village. No incorporated city, town, or village shall be permitted to issue or negotiate any certificate of indebtedness, the payment of which is secured by a pledge of or lien upon any property, or the income or revenue derived therefrom, belonging to such municipality, and all such certificates or other evidences of indebtedness issued contrary to the provisions hereof shall be void."

In 1921 the Legislature revised the tax and revenue laws of the State with Chapter 133 of the Laws of 1921. § 509 of said Chapter specifically repealed Chapter 54 of the Session Laws of 1915 and said nothing as to Chapter 68 of the Laws of 1919.

The question is whether or not the Legislature by repealing Chapter 54 of the Laws of 1915 did not also repeal the amendment carried forward in 1919, although such repealing statute was silent as to such amendment.

It is a general rule of law that where an amendment to a statute merely enlarges and extends the provisions of the original act, such act retaining its identity, the repeal of the original act carries with it the amendment. This general rule is clearly set forth in 36 Cyc. 1095. The only exception to the rule is in case where an amendatory act is in reality affirmative and original in its character, and in such case the repeal of the original act will not affect the amendment thereto.

The amendatory statute of 1919 is not affirmative and original in character; it is precisely the same as the section which it amended, with the exception of the additional provision relative to certificates of indebtedness of incorporated cities, towns and villages; this amendment carries forward only the substance included in one section of the original act, the original act itself covering a much broader field, and it would not take on the character of an original act within itself; it, therefore, remained a part of the law of 1915, and when the law of 1915 was repealed, it was evidently the intention of the Legislature to repeal not only the 1915 law but all amendments thereto. The limitation of indebtedness under the 1915 law was one and one-third per cent, and it is significant that this limit was left unchanged in the amendatory act.

There is no notation on our statute to indicate that the amendatory act of 1919 was repealed by the Law of 1921, and I, therefore, overlooked this fact in rendering Opinion No. 3885.

The following authorities sustain the proposition of law outlined herein: *Blake v. Brackett*, 47 Me. 33; *Ellison v. Jackson Water Co.*, 12 Calif. 554; *Welstead v. James*, 93 N. Y. Supp. 341; *Barton v. Moscow School District*, 29 Pac. 43; *State v. Young*, 30 S. C. 411

I am of the opinion, therefore, that there is now no legislative enactment limiting the indebtedness to be incurred by the different counties of the state, and, therefore, the only limitation on such indebtedness is governed by the Constitution of New Mexico which prescribes a limitation of 4% as above outlined.