

**Opinion No. 31-46**

February 3, 1931

**BY:** E. K. Neumann, Attorney General

**TO:** Hon. Arsenio Velarde, State Auditor, Santa Fe, New Mexico.

{\*40} With reference to your letter containing a copy of the letter of R. M. DeOliviera, County Clerk of DeBaca County, beg to advise that, in my opinion, the position taken by Mr. DeOliviera is without merit.

Section 33-3219 of the 1929 Code provides for the reclassification of counties every second year after January 1, 1925, which said classification is to **"be determined by the state auditor," "within thirty days from the first day of January of each second year."**

Clearly the classification is to be made by the state auditor from the assessed valuation of each county as finally fixed for the preceding year, and that classification shall pertain for two years, or until within thirty days from the first day of January two years hence.

In this case, DeBaca County was classified as a third class county by you sometime between January 1st and 31st, 1931, and such classification shall pertain until sometime between January 1st and 31st, 1933, at which time DeBaca County shall either remain a third class county or become a county of a higher or lower class as determined by the state auditor from the assessed valuation as finally fixed for the year 1932.

The present officers of DeBaca County were elected as officers of a fourth class county and qualified as such, therefore, because of the constitutional inhibition, quoted in my letter of January 28, 1931, regarding the same subject, these officers cannot receive a greater salary than provided by law for officers of a fourth class county. The officers who will be elected in November 1932, will be elected as officers of a third class county, qualify as such on January 1, 1933 and draw salaries as such for 1933 and 1934, regardless of a possible reclassification after January 1, 1933.

I believe that the Supreme Court of this state has given several opinions in like cases which will justify my conclusions herein.