

Opinion No. 35-1143

August 19, 1935

BY: FRANK H. PATTON, Attorney General

TO: Hon. Byron O. Beall, Chief Tax Commissioner, Santa Fe, New Mexico.

{*78} I have your letter of August 16th together with resolution from the Board of County Commissioners of Dona Ana County, requesting the allowance of a special levy outside of the twenty mills limitation for Special Bridge account.

The facts are set forth in your letter and in the resolution, and you state that this levy, if allowable, is a special levy which would be an ad valorem rate upon all of the property located within the various school districts as listed in the resolution.

Under the facts as outlined, I am unable to convince myself that such {*79} levying may legally be made outside the twenty mill limitation, and there is a possibility that a tax of this nature, only being levied upon and in certain school districts, would be held by the courts as violative of the constitutional provision relative to uniformity of taxation.

However, I desire to call your attention to Section 64-813, of the 1929 Compilation, and which is a part of Chapter 105 of the Laws of 1925. This section reads as follows:

"That in order to provide for funds for the construction, improvement and maintenance of bridges over and across canals, drainage and irrigation ditches in duly constituted irrigation or drainage districts, where such canals, irrigation or drainage ditches cross the country highways in irrigation or drainage districts organized under the laws of New Mexico, the boards of county commissioners of the several counties in which there are such irrigation or drainage districts organized under the laws of New Mexico, if they deem it necessary, advisable and for the best interest of their respective counties, are hereby authorized and directed to make and cause to be collected a special tax levy each year of not to exceed two mills on the dollar of the assessed valuation of all property in their respective counties subject to taxation for state and county purposes, which levy shall be made and the proceeds thereof collected at the same time and in the same manner provided for the levying and collecting of other county taxes."

Your attention is directed to the fact that under this provision the tax levy, which is not to exceed two mills on the dollar, is to be against all the property in the county and is not limited to property in any certain irrigation district or any certain school district.

There is a strong probability that this levy, if made, would be held by the court to be outside the twenty mill limitation, and due to the importance of the matter and the great need for such levy in Dona Ana County, it is my belief that the State Tax Commission should allow such levy against all the property in the county.

I herewith return resolution of the Board of County Commissioners of Dona Ana County.