

## Opinion No. 36-1299

February 10, 1936

**BY:** FRANK H. PATTON, Attorney General

**TO:** Mr. Juan N. Vigil, State Comptroller, Santa Fe, New Mexico.

{\*102} We have received in this office a carbon copy of letter directed to you under date of February 8, 1936 by Judge Numa C. Frenger regarding an opinion which we wrote recently on the application of the \$ 2.50 fee chargeable under Chapter 14, Laws of 1934, to complaints filed by taxpayers for the correction of errors in the assessment roll.

The question is raised as to whether or not such proceedings are civil actions within the meaning of said Chapter 14, Laws of 1934.

It will be noted that errors of this kind may be corrected in two manners: First, by a report made by the county treasurer to the District Attorney and a hearing on such report before the District Court. The other method is by the taxpayer making a complaint and having it filed either by the District Attorney or by himself. In both cases a hearing is held before the District Court and the State Tax Commission is given notice of the hearing. The State Tax Commission may appear either in person or by any member, agent or attorney. An appeal is allowed to the Supreme Court by the State Tax Commission or such counsel employed by the Commission or by the taxpayer. It seems to me that this proceeding has all the ear marks of a "civil action." I am supported in this contention by the following cases: People vs. Smith, 118 N.E. 61, 281 Ill. 538; People vs. St. Louis Merc. Bridge Company, 118 N.E. 733, 282 Ill. 408; Boston & M.R.R. vs. State, 75 N.H. 513, 77 Atl. 996, 31 L.R.A. (N.S.) 539; In re Fox's Estate, 127 N.W. 668, 162 Mich. 531.

I have read the cases of Board of County Commissioners vs. A.T. & S.F., 52 Pac. 2d 126 and Los Alamos Ranch School vs. State, 35 N.M. 122, but both of these cases have reference to entirely different statute and proceeding. They refer to Section 141-404, 1929 Compilation, and the amendment thereto, Chapter 143, Laws of 1933. These cases held that the proceeding authorized by said section was not a civil action within the meaning of the appellate procedure act and that there was no appeal from such a proceeding. I do not believe that these cases are in point with the present situation and I am still of the opinion that where a complaint {\*103} is made by a taxpayer under Section 141-306 asking for the correction of errors in the assessment roll, such a proceeding is a civil action within the meaning of Chapter 14, Laws of 1934.

In my original opinion on this matter I did not concern myself with cases where the County Treasurer makes a report to the District Attorney of errors in the assessment roll and a hearing is held on such report. It is quite likely that that might present an entirely different situation where the \$ 2.50 fee would not apply.

By: QUINCY D. ADAMS,

Asst. Atty. General