

Opinion No. 36-1304

February 14, 1936

BY: FRANK H. PATTON, Attorney General

TO: Bureau of Revenue, Income Tax Division, Santa Fe, New Mexico. Attention: L. D. Sparks, Director.

{*103} We have your letter of February 14th wherein you inquire whether an elective or appointive officer with a definite tenure of office and who assumes an office subsequent to the effective date of the Income {*104} Tax Act is subject to the tax under said act.

You of course will recall our former opinion upon the question of the right to impose the income tax upon certain classes of officers and our holding that such was not warranted under the Constitution and, in fact, was violative of the Constitution as being an attempt to decrease the salary of such officer during his term of office.

In studying the authorities when said opinion was in course of preparation, we also gave consideration to the question raised by you and we are convinced that the fact that the officer was elected after the effective date of the act is of no consequence and that the imposition and collection of the tax would amount to a reduction in salary and for this reason your inquiry is answered in the negative.