

Opinion No. 37-1536

February 19, 1937

BY: FRANK H. PATTON, Attorney General

TO: Mr. Benj. D. Luchini Chief Tax Commissioner Santa Fe, New Mexico

{*52} We have been giving consideration to your letter of February 16th in regard to the valuation of the property {*53} of Grant County and the said letter, together with a copy of the Order of the New Mexico State Tax Commission entitled "In the Matter of the Valuation and Classification of Grant County for the year 1936" and dated February 18, 1937, relate the facts as they exist.

We also understand from statements made by you that the petition filed in the District Court in Grant County and mentioned by you in your letter also relates the said facts.

The facts as stated show that the Tax Commission, prior to January 1, 1937, as required by law, determined the valuation for said Grant County for the year 1936 in the amount of \$ 13,605,035.00 and these figures were certified to the State Auditor.

This valuation was erroneous in that the valuation of the Kennecott Copper Company of Grant County was shown at the figure of \$ 5,756,981.00 for the year 1936, whereas in truth and in fact these figures were erroneous in that there was an omission in the assessment and this has been corrected by petition filed in the District Court in Grant County and the said valuation is now shown pursuant to order of the Court to be \$ 6,221,981.00

By reason of the increase in valuation, Grant County has sufficient valuation to place it in the category of a first class county.

Under Section 33-3219 of the 1929 Compilation we find that the classification of counties shall be fixed and governed by the assessed valuation as finally fixed for the preceding year. It is further provided in effect that during the month of January such classification is to be determined by the State Auditor from such final fixed valuation for the preceding year and that the said State Auditor then notifies the Board of County Commissioners of the class within which such county comes.

The duty imposed upon the State Auditor is ministerial only and that official has no discretion and is governed solely by the figures shown to him.

The statute just mentioned does not contemplate cases such as the one we are now considering and we have always been of the belief that the statute must be strictly construed and that reductions in valuations by court order would not affect the classification of the county. To hold otherwise would in many instances nullify the

statute and place the classification of counties subject to the whims of dissatisfied taxpayers.

However, in the present case the facts reveal that this additional valuation was in fact present and in existence at all times and that by some inadvertence evidently it was omitted and this being true it would seem that as a matter of right and justice the true valuation should in some way and by some method be shown. In the matter at hand resort was had to the Court in order to make such true showing.

For these reasons it is my opinion that Grant County should now be classed as a first class county and that the officers of said county are entitled to receive compensation as officers of a first class county.

This being true, I believe the State Auditor has the power to issue a corrected determination, notification or certification to the County Commissioners showing the said corrected valuation.

As to the second portion of your letter which requests advice upon the matter of your authority to revise the budget in order to increase the salary fund an additional \$ 3,000.00 for payment to the county officers as officers of a first class rather than a second class county.

I am unable to convince myself that the Tax Commission has any authority or power to so act.

{*54} Section 33-5904 is quite specific and definite and provides in part that "the budget as finally approved and certified * * * shall not be altered or changed except by order of the State Tax Commission and then only for the correction of obvious clerical errors **therein.**"

We can not say that there were any obvious clerical errors in the budget as made. Rather the budget itself was erroneous in that it was computed upon an erroneous existence of fact.

The word "therein," and which we have underscored in the foregoing quotation, limits correction of errors to those obvious clerical errors which are in the budget itself and I find no authority for a consideration of extrinsic evidence in connection with a consideration of the budget.

For this reason, therefore, I must disapprove any correction of the budget and leave the matter of salaries to be solved by some agreement between the county officials and the State Tax Commission.