

Opinion No. 37-1652

May 26, 1937

BY: FRANK H. PATTON, Attorney General

TO: State Tax Commission Santa Fe, New Mexico

{*104} This is to acknowledge receipt of your letter of May 21, 1937, in which you inquire as to the constitutionality of Chapter 98 of the 1937 Session Laws. The act, including the title, reads as follows:

"AN ACT RELATING TO SALARIES OF OFFICIALS IN COUNTIES OF THE FIFTH CLASS WITHIN THE MIDDLE RIO GRANDE CONSERVANCY DISTRICT.

"Be It Enacted by the Legislature of the State of New Mexico:

"Section 1. The Treasurer and Ex-officio Collector; The Assessor; The Sheriff; and the County Clerk of all Counties of the fifth class within the Middle Rio Grande Conservancy District are hereby authorized to appoint an additional Deputy at a salary of \$ 900.00 per annum, which salary shall be paid to such deputies out of the County Salary Fund, at the times and in the manner other salaries are paid therefrom, and shall be in addition to the present allowance for deputies.

"Section 2. The salary of all Fifth class county officers shall hereafter be as follows: Sheriff \$ 1500.00 per annum; Assessor \$ 1500.00 per annum; Treasurer \$ 1500.00 per annum; County Clerk \$ 1500.00 per annum.

"Section 3. REPEAL. All laws or parts of laws in conflict with this act are hereby repealed."

In your letter you state that all fifth class counties are contending for the salaries fixed by Section 2 of the act, and that the Commission has consistently refused such requests. You likewise state that at a meeting with the Board of Commissioners of Sandoval County, you approved the appointment of an additional deputy and increase in salaries of officers mentioned in Section 2, pending an opinion from this office as to the validity of this act, concluding with the assertion that it is your contention that Section 1 of the act is not clearly expressed in the title as required by Article IV, Section 16 of the Constitution, and further that Section 2 is broader than the title thereof in that the increases in salaries are not confined to counties within the Middle Rio Grande Conservancy District.

We are inclined to agree with your contention. Considering the content of the act, without attempting to indulge in any inferences as to the legislative intent, it would seem that Section 1 of the act purports to provide for the creation of new offices of deputies for the sheriff and county clerk of all fifth class counties in the Middle Rio Grande

Conservancy District. Section 2 purports to increase the salaries of the sheriff, assessor, treasurer and county clerk of all fifth class counties, regardless of the location of such counties. I do not believe that Section 1 of the act can properly be said to be included in the title, which merely refers to salaries of certain officials and not to creation or authorization of any new office. However, we desire to call your attention to the fact that the Supreme Court of this state has repeatedly held great latitude is vested in the legislature in enacting statutes, and further that the mere generality of the title is not fatal to the validity of the act. The general test seems to be whether or not the title fairly gives reasonable notice of the subject matter of the statute. If so, the act should be sustained. *State vs. Ingalls*, 18 N.M. 211, 135 P. 1177.

It may be that the content of Section 1, providing for the appointment {*105} of new deputies and fixing their salaries, is sufficiently germane to the general objects of the bill as expressed in the title to justify an assumption that it is valid. We do not think so, but in view of the liberal construction given by our Supreme Court, we hesitate to dogmatically assert that it is invalid.

We come now to the question of whether or not Section 2 is valid. Certainly, in so far as it purports to include all counties of the fifth class, it violates the provisions of Article IV, Section 16. The title clearly confines the application of the act to fifth class counties within the Middle Rio Grande Conservancy District. On the other hand, it might be argued that in construing Section 2, reference must be made to the title and by implication it refers only to fifth class counties within the Middle Rio Grande Conservancy District. Such a construction, in our opinion, would be strained and unwarranted. However, we merely call your attention to that in passing. It is our opinion that this section exceeds the limits of the title and is therefore invalid.

It has occurred to us that even if we assume that the title of the act is sufficient to include both sections, the act might be unconstitutional as special legislation in violation of Article IV, Section 24 of the Constitution. As to the treasurer and assessor, the classification attempted in the act might be valid on the ground that they are charged with additional duties. However, as to the other offices mentioned in the act, it occurs to us that this act might be seriously questioned on the ground that there is no reasonable basis for placing counties in the Middle Rio Grande Conservancy District on a different basis than other fifth class counties.

We likewise wish to call your attention to the fact that under no circumstances can Section 2 of the act be effective this year. Article IV, Section 27 of the Constitution provides that the salaries of public officials may not be raised or diminished during their term of office. The converse of this question was directly presented in *State vs. Sierra County*, 29 N.M. 209, 222 P. 654. It was there held that any attempt to do so was clearly void. We call your attention to this, as you stated you had approved the increase in salaries of the specified officers in Section 2.

In conclusion we wish to say that it is our opinion that Chapter 98 above quoted is unconstitutional and invalid. However, we wish to reiterate that the question presented

is very close and that in all cases where the constitutionality of any act is challenged under the provisions of Article IV, Section 16, except in cases of clear excess, the question will be one of difficult application. In view of this, we would suggest that a friendly suit be instituted to determine the constitutionality of this act.

Trusting that this answers your questions, I am

By: RICHARD E. MANSON,

Asst. Atty. Gen.