

## Opinion No. 53-5775

July 1, 1953

**BY:** RICHARD H. ROBINSON, Attorney General

**TO:** Mr. Fred W. Moxey Chief Tax Commissioner State Tax Commission Santa Fe, New Mexico

{\*175} In your letter dated June 29, 1953, you quoted a portion of § 3, Ch. 117, Laws of 1953, which was HB No. 341, providing salary schedules for counties of the first class with an assessed valuation of \$ 20,000,000 and over, and for adjustment of salaries in counties of the first class with an assessed valuation of \$ 20,000,000 or less. This portion of the section is as follows:

"Provided, however, that counties of the first class with an assessed valuation of \$ 20,000,000 or less shall apply a salary schedule of not more than the salary schedule applicable to counties of the first class with an assessed valuation of over \$ 20,000,000 and not less than the salary schedule applicable to counties of the second class. The salary schedule for counties of the first class with an assessed valuation of \$ 20,000,000 or less shall be determined by the **board {\*176} of county commissioners and approved by the State Tax Commission** at the time county budgets are determined and approved. The salary schedule in effect on the day the term of office of any county officer begins shall not be increased or decreased during such term of office."

In connection with this language you ask three questions, as follows:

"(1) Can the salaries of the elected county officials be reduced in view of the provision of Art. 4, Sec. 27 of the Constitution of the State of New Mexico?

"(2) Can the salaries of the deputies in first-class counties now drawing salaries as provided for under the first-class county schedule, be reduced by the Board of County Commissioners to salaries as provided for under the second-class county schedule?

"(3) Can these reductions be made starting July 1, 1953 for the 1953-54 fiscal year?"

In answer to question No. 1, since the elected county officials are included in this section and no provision is made elsewhere in the Constitution for a change in their salaries during their term of office the salaries of elected county officials may not be reduced during their term of office.

Answering your question No. 2, the 1953 amendment above quoted does give to the Board of County Commissioners, with the approval of the State Tax Commission, the authority to reduce salaries in such class counties where the assessed valuation is \$ 20,000,000 or less, of all deputies and employees whose salaries are fixed by law and

to pay the amounts set out as salaries for such deputies and employees in a second class county, if they desire.

In answer to your question No. 3, the adjustments of salary schedules for deputies and employees may be made July 1, 1953, since the constitutional prohibition against increasing or decreasing officers' salaries does not apply to officers other than to elected county officers.

I trust this satisfactorily answers your questions.

By: C. C. McCulloh

1st Assist. Attorney Gen.