

Opinion No. 54-6054

December 10, 1954

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. Edward M. Hartman State Comptroller Santa Fe, New Mexico

{*526} In your letter dated December 2, 1954 you enclosed a letter from the City Attorney of Farmington, relative to § 14-3705, 1941 Comp., 1953 Suppl., authorizing municipalities to levy taxes not to exceed one mill on the dollar for the purpose of paying the cost of repair and construction of street improvements adjoining property of the municipality, the United States, the State, or any county thereof. This letter further states that approximately 7/10ths of one mill could have been levied for such purpose, within the 20-mill constitutional limitation, for the present fiscal year. You inquire whether the State Tax Commission may lawfully disallow such part of the one-mill levy for such city purposes.

It is my understanding from the Tax Commission that the city and school districts direct-charge levy was made for the full amount authorized under the law and long-custom in dividing the 20 mills and that the saving of 7/10ths of a mill was made out of the 5-mills to which the county is legally limited.

§ 76-311, 1941 Comp., was passed before the 20-mill constitutional limitation was adopted but is still the statutory limit insofar as levies for municipal purposes may be concerned. By long-custom, it is my understanding that the 20-mills is divided on the basis of not to exceed 5 1/2-mills to the State; not to exceed 5-mills for school maintenance; and not to exceed 5-mills for counties, leaving approximately 4 1/2-mills to be divided between municipalities and school district direct-charge levies. Assuming that the full levy for municipal and school {*527} district purposes under such a plan of distribution was made, the municipal levy is still well within the 5-mill maximum contained in this section.

Under § 14-3705, 1941 Comp., 1953 Suppl., the language was changed from that previously contained and instead of providing that municipalities "may" provide for the cost of such repairs or improvements, the 1953 amendment uses the word "shall" which denotes a legislative intent that the levy for such purposes be mandatory, if possible, within the statutory and constitutional limitations. If the county did not need its entire 5-mills then the amount not used for county purposes should have been levied for the municipal purposes contained in this section, in view of the mandatory language governing the municipality.

Since the levies for the current year have been made and approved and are now final and taxes thereon are being collected, it is too late to make any changes for this year, however, in the future, we feel that in case the municipal levy does not exceed the

statutory 5-mills and the total levy for all purposes does not exceed 20-mills that the levy should be provided for such municipal purposes up to the full 20-mills.

§ 76-525, 1941 Comp., p.s., charges the Tax Commission with the duty of amending, revising, correcting and approving municipal, county and school district budgets. It is doubtful, however, whether this would give the Tax Commission discretion to disallow the municipal levy made mandatory under the 1953 amendment to § 14-3705 without some compelling reason therefor.

By: C. C. McCulloh

Assist. Attorney General