

## **Opinion No. 57-58**

March 22, 1957

**BY:** OPINION OF FRED M. STANDLEY, Attorney General Robert F. Pyatt, Assistant Attorney General

**TO:** Honorable Manuel R. Baca, Acting Chief Tax Commissioner, State Tax Commission, Santa Fe, New Mexico

### **QUESTIONS**

#### QUESTIONS

Are lands used presently for grazing purposes still to be assessed as grazing lands, even though small tracts adjacent to the grazing area were sold by the owner of the grazing area at greatly increased values? The reason for the sale of the small tracts at greatly increased values was construction of a new highway.

#### CONCLUSION

While actual use is one factor to consider, the value of the land is a necessary ingredient in determining the proper assessment.

### **OPINION**

#### ANALYSIS

Section 72-6-8, N.M.S.A., 1953 Compilation, provides as follows:

"At the session herein provided to be held on the third Monday of November annually the state tax commission shall determine and fix valuations for tax purposes, of the different classes of live stock and of the different classes of grazing lands for the ensuing year, and such valuations, when duly certified to the tax assessors, shall be taken and used as valuations for assessment purposes."

In our opinion, use for grazing purposes is evidence that the lands should be assessed as grazing lands. However, such use is not conclusive. It is conceivable that despite the fact of grazing on the land in question, it is actually being held for speculative purposes, and should be valued and assessed accordingly. No conclusive answer to this and related situations can be given, since in the last analysis it is largely a question of fact.

The Tax Commission has considerable discretion in these matters. While actual use is one factor to consider, it is to be borne in mind that the value of the land is a necessary ingredient in determining the proper assessment. New Mexico Constitution, Article VIII, § 1; § 72-2-2, N.M.S.A., 1953 Compilation.