

Opinion No. 60-135

July 14, 1960

BY: OPINION of HILTON A. DICKSON, JR., Attorney General

TO: Mr. James Nechero Board of County Commissioners McKinley County County Court House Gallup, New Mexico

QUESTION

QUESTIONS

1. Must the State Auditor classify each county on the basis of assessed valuation for salary purposes for the year 1960 pursuant to Sec. 15-43-2, N.M. S. A., 1953 Comp.?
2. Will county officials be entitled to receive increased salaries due to increased valuation for the next two ensuing years after the classification?

CONCLUSIONS

1. Yes.
2. Yes.

OPINION

{*513} ANALYSIS

Section 15-43-2, N.M.S.A., 1953 Comp., reads in relevant part as follows:

{*514} "From and after the first day of January 1952, the classification of counties shall be fixed and governed by the assessed valuation as finally fixed for the preceding year: Provided: within thirty (30) days after said first day of January, 1952, **and within thirty (30) days from the first day of January of each second year thereafter, such classification shall be determined by the state auditor from the assessed valuation of such county as finally fixed for the preceding year, and the state auditor upon making such determination shall notify the board of county commissioners of each county of the class within which each of the counties of this state falls according to such classification and the classification as so fixed and determined by the state auditor shall govern the salaries of county officers for two (2) years thereafter.**"

This section requires that the State Auditor do two things. He must first determine the classification of each county within the state every second year after 1952. Second, he must notify the Board of County Commissioners of each county of the classification for

that county. These duties are mandatory upon the Auditor. These are duties he must perform. You will note that the section uses the words "shall be determined" and "shall notify." The word "shall" has been traditionally termed a word of command by the Supreme Court of this state. See **In Re Armijo's Will**, 57 N.M. 649, 261 P. 2d 833. See also Opinion of the Attorney General No. 58 dated February 14, 1931, which determined that, under a similar statute, the duties of the Auditor were mandatory.

In keeping with the requirements of this statute, the State Auditor should have classified each county of the state within thirty (30) days from the first day of January 1952, 1954, 1956, 1958, and 1960. You state in your letter that the State Auditor classified McKinley County for the year 1959. This classification is not authorized by the statute. Notwithstanding this 1959 classification, it is incumbent upon the State Auditor to classify McKinley County for the year 1960 pursuant to the requirements of the above quoted section.

Your second question is also answered in the affirmative. The above quoted section provides that these biannual classifications shall be the basis for the salaries of county officers for the next two years thereafter. This does not meet with any constitutional objection as Opinion of the Attorney General No. 58-45 dated March 4, 1958 makes clear. We reaffirm the portion of that opinion applicable here.

By: Boston E. Witt

Assistant Attorney General