

Opinion No. 63-06

January 31, 1963

BY: OPINION of EARL E. HARTLEY, Attorney General

TO: Mr. Jesse D. Kornegay Acting Chief Tax Commissioner State Tax Commission
Santa Fe, New Mexico

QUESTION

QUESTIONS

1. Does the state tax commission have authority to issue a general order directed to **all** county assessors in New Mexico instructing them to value all property within their assessing jurisdiction and place it on the assessment rolls at a uniform percentage of its actual value?
2. Will a wilful violation or refusal to comply with such an order issued by the state tax commission constitute grounds for suspension of the county assessor under the provisions of Section 15-38-3, N.M.S.A., 1953 Compilation, and for removal under Section 5-3-4, N.M.S.A., 1953 Compilation?

CONCLUSIONS

1. Yes.
2. Yes.

OPINION

{*14} ANALYSIS

A determination of the proper answers to the questions posed by you revolves around a consideration of the authority residing in the state tax commission. To that end, we will examine in detail the provisions of the statutes establishing the state tax commission and empowering it to act.

{*15} The Constitution of New Mexico makes no provision for the establishment or creation of a state tax commission. Accordingly, we conclude that the existence of the state tax commission is wholly dependent on the will of the legislature. It is an administrative agency created by the legislature to perform certain functions in the ad valorem tax field. The statutes most pertinent to the creation and authority of the state tax commission are as follows:

1. Section 72-6-1, N.M.S.A., 1953 Compilation, states that "there shall be a state tax commission. . . to consist of three (3) commissioners. . . ."

2. Section 72-6-12, N.M.S.A., 1953 Compilation, entitled **General powers and duties of the commission**, states that:

"The commission shall:

"1. Have and exercise general supervision over the administration of the assessment and tax laws of the state, over boards of equalization and all officers having power of levy and assessment, to the end that all property subject to assessment shall be placed on the tax rolls and be assessed in proportion to the value thereof, and that taxes shall be equal and uniform upon subjects of taxation of the same class.

"2. Confer with, advise and **direct** assessors, county boards of equalization, and all officers having power of levy, assessment and equalization, as to their duties under the law. . .

"3. Advise and assist the attorney general and the district attorneys in the commencement and prosecution of actions and proceedings in respect to the assessment of property and the collection of taxes, and enforce the law imposing duties or penalties on any public officer, . . . in respect to assessment or return of lists of property and the collection of taxes; . . ."

"9. The state tax commission shall have power to prescribe standards, which the assessors shall follow in making property assessments, to the end that all property within the state shall be uniformly assessed as to each classification of property in proportion to its value.

"10. As soon as practicable after the effective date of this act, the tax commission shall undertake to equalize the value of properties within the different counties of the state. If in the judgment of the commission any county assessor has failed to properly assess the property in any county either in whole or in part, the commission shall in any year have the power and be charged with the duty of causing the property in such county to be reassessed either in whole or in part as in the judgment of the commission shall appear necessary. Such reassessments shall be under the direct control and supervision of the commission. The actual cost of such reassessment shall be paid by the county reassessed out of the general funds of the county, . . ."

"13. Make rules and regulations {*16} necessary in the carrying on of its duties."
(Emphasis added)

3. Section 72-6-12.1, N.M. S. A., 1953 Compilation, entitled **Uniform assessment according to value required**, states that:

"The state tax commission shall constitute and be the state board of equalization, and as such board of equalization shall require that all taxable tangible property be assessed uniformly in proportion to the value thereof. To the end that all taxable tangible property may be assessed and valued in accordance with article VIII, section 1 of the Constitution of the state of New Mexico, and in order to perform the duties imposed upon it by law, **the state tax commission may promulgate all necessary rules and regulations, including standards of assessments, which rules and regulations shall be followed by the county assessors and the county boards of equalization** in connection with the assessment and valuation of property for tax purposes." (Emphasis added)

A cursory examination of the statutes above quoted makes it plain that the state tax commission has been created by the legislature and by it vested with extremely broad powers to act for the legislature in matters pertaining to the field of ad valorem taxation. More comprehensive authority over every facet of the administration of the ad valorem tax system can hardly be imagined than that contemplated by the statutes set out above. Although it seems to us that the tax commission's authority is complete without any consideration of Section 72-6-12.1, N.M.S.A., 1953 Compilation, we note that the legislature chose to reinforce their delegation of authority to the tax commission by the enactment of that section in 1955. By the terms of that statute, as plainly appears from the terms of the other statutes considered above, the county assessors and county boards of equalization are clearly required to execute policies and regulations promulgated by the tax commission which it considers necessary to perform the duties imposed upon it by law. In effect, then, the county assessors and county boards of equalization, although both are popularly elected, are directly responsible to the state tax commission and are required by the terms of all the statutes above considered to adhere inflexibly to the policies of the commission.

The Supreme Court of New Mexico has taken the same view of the authority of the tax commission, as is illustrated by its statement in **First State Bank of Mountainair v. State Tax Commission**, 40 N.M. 319, 59 P. 2d 667 (1936), that:

"Taxation is a legislative function without any limitation except such as is imposed by constitutional provisions. The state tax commission is the administrative body which has been designated by the legislature to secure uniformity throughout the state. . ." **Id.** 40 N.M. at 323.

The pronouncement of the Court in another case, in which was questioned the power or authority of the state tax commission, sitting as the state board of equalization, to take the administrative action it deemed necessary to carry out its statutory duty of equalizing property taxes within the state, is so compelling as to practically dispose of the two questions posed without further authority. In that case, **South Spring Ranch and Cattle Co. v. State Board of Equalization**, 18 N.M. 531, 139 P. 159 (1914), the commission had, in order to perform what it conceived to be its duty to equalize the tax burden, raised the valuations of **certain classes of property in some of the counties** of the state. The statutes ^{*17} there under consideration are the forerunners of and

substantially similar to those presently in effect. **Compare Sections 72-6-4, 72-6-12(1), and 72-6-12.1**, N.M.S.A., 1953 Compilation, with those controlling the **South Spring** decision. The Court reviewed the constitutional and statutory provisions governing its decisions and then stated:

"It is to be seen, from the foregoing provisions of the Constitution and statutes, that uniformity throughout the State of the burdens of taxation is to be maintained. In fact, it would be an anomaly in America if discrimination in taxation were to be contemplated in constitution or statute. This consideration, it seems to us, should be constantly borne in mind in determining the true intent and meaning of the legislation involved." **Id.**, 18 N.M. at 542.

We believe that the consideration of uniformity, as was stressed by the Court in the **South Spring** decision and quoted directly above, is as much to be borne in mind as it was in 1914.

In reaching a decision that recognized and upheld the power of the state board of equalization, the Court further stated in the **South Spring** case that another consideration was:

"The fact that the precise manner of the exercise of the power of equalization by the state board is not pointed out in the statute. It is therefore fair to assume the legislative intent to have been to confer upon the board an efficient power of equalization so that the burdens of taxation may be equally distributed throughout the State and upon all of her citizens. . . . It would seem clear, therefore, that unless the power of the state board is lacking or restrained by reason of the terms of the legislation, considered as a whole, the state board ought to have, and has, the power to deal with classes of property, . . ." **Id.**, 18 N.M. at 543.

After an exhaustive survey of pertinent New Mexico cases and those from other jurisdictions, the Court decided that the contested power resided inherently in the state board of equalization and said:

". . . We appreciate that little aid is to be obtained from the cases in the other States on account of the diversity of the statutory provisions. We think, however, that certain principles, fairly deductible from all of the authorities, are accepted in all of the cases, as follows:

"The power of the state boards to equalize the burdens of taxation includes the power to deal with classes of property, unless, by reason of the terms of the taxing statute, or constitutional provisions, the power is restrained. Where the mode of the exercise of the power of equalization is pointed out in the statute, it must, of course, be followed **d. Where the mode is not pointed out, any reasonable and efficient mode may be adopted to accomplish the end in view.** Unless controlled by statutory terms, the power to equalize includes the power to increase or decrease valuations, and such result is immaterial." **Id.**, 18 N.M. at 566. (Emphasis added).

Turning now to the first question posed by you, we must conclude that the action contemplated by the question is valid and well within the limits of authority of the state tax commission if designed to accomplish its statutory responsibility of bringing about an equalization of property taxes within the state. Of course, such action as is contemplated {*18} may fail if it can be shown that it is productive of a lack of equality or **unjustifiable** discrimination rather than the promotion of equality. Insofar as is apparent to us, however, the proposed instructions to the county assessors fall well within the inherent powers possessed by the state tax commission and its right to proceed in this manner to bring about an equalization of the property tax burden is not to be doubted.

Turning now to the second question posed, we note that Section 72-6-12 (13), N.M.S.A., 1953 Compilation, provides that:

"The commission shall:

"13. Make rules and regulations necessary in the carrying on of its duties."

Section 15-38-3, N.M. S. A., 1953 Compilation, states that: "Whenever any county assessor shall wilfully fail or refuse to perform any duty imposed upon him by law, the commission shall have the power to suspend the assessor, provided that he shall have ten (10) days' written notice of such proposed suspension and shall be entitled to a hearing before the commission, upon which a written order shall be made by the commission. The suspension may continue for such period of time as may be necessary to correct the violation of the statute involved and until the suspended assessor has made a showing satisfactory to the commission that he is able and willing to conduct his office in the proper manner. The assessor shall not be entitled to salary or other compensation for and during the period of suspension."

The question then becomes, and it is not a difficult one, whether or not the orders of the state tax commission have the force of law. That they do have such effect cannot be denied.

It is stated flatly in a recognized encyclopedia of the law that "rules, regulations, and general orders enacted by administrative agencies pursuant to the powers delegated to them have the force and effect of law. . ." See 2 Am. Jur. 2d, **Administrative Law**, Section 292 et seq.

However, it is not to other jurisdictions that we need turn in order to decide this question but rather to the manifest intent of the legislature as so clearly and repeatedly expressed in the statutory enactments concerning the state tax commission. The commission is by the terms of Section 72-6-12, N.M.S.A., 1953 Compilation, (set out in full on page 2 hereof) given the authority to "exercise general supervision over the administration of the assessment and tax laws of the state, over boards of equalization, and all officers having power of levy and assessment. . . ." By paragraph 2 of the same section, the commission is delegated the authority to "confer with, advise and **direct** assessors, county boards of equalization, and all officers having power of levy,

assessment and equalization, as to their duties under the law, . . ." By the terms of paragraph 9 of that same section, the commission is authorized to prescribe standards **"which the assessors shall follow** in making property assessments . . ." If further citation of authority is required, it is found in Section 72-6-12.1, N.M.S.A., 1953 Compilation, in which it is separately stated that, in order to achieve the equality in taxation contemplated by our Constitution, the commission may "Promulgate all necessary rules and regulations, **including standards of assessment**, which rules and regulations **shall be followed by the county assessors and the county boards of equalization in connection with the assessment and valuation of property** for tax purposes."

{*19} Detailed consideration of these statutes is unnecessary to deciding that the county assessors and the county boards of equalization are bound by law rigidly to adhere to policies established by the state tax commission. The legislature could hardly have more clearly stated that, among the other requirements imposed upon them by law, one duty so imposed was to comply with and execute the policies and implementing instructions of the state tax commission. For a wilful failure to comply with such policies and regulations, we have no doubt that the assessor may be suspended from office by the state tax commission in accordance with the terms of Section 15-38-3, N.M.S.A., 1953 Compilation. We reached the same conclusion in A G Opinion No. 6467, June 13, 1956.

Under Section 5-3-4, N M. S. A., 1953 Compilation, any county official elected by the people who fails, neglects, or refuses to discharge the duties of the office is subject to removal. Failure, neglect, or refusal to comply with policies and regulations promulgated by the state tax commission would, therefore, render a county assessor subject to an action to remove him from office. The state tax commission has authority to cause removal proceedings to be instituted, by virtue of the provisions of Section 15-38-7, N.M.S.A., 1953 Compilation.

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