

## Opinion No. 68-13

January 30, 1968

**BY:** OPINION OF BOSTON E. WITT, Attorney General

**TO:** Hon. Tibo Chavez State Senator P.O. Box 544 Belen, New Mexico Hon. Carter W. Kirk State Representative P.O. Box 712 Deming, New Mexico Hon. Anthony A. Lucero State Representative 2010 Rio Grande, N.W. Albuquerque, New Mexico

### QUESTIONS

1. Is Section 72-2-21.9, N.M.S.A., 1953 Compilation (P.S.), constitutional in the following respects:

a. Does the State Tax Commission have the authority to reappraise property in counties where the local authorities fail to do so?

b. Must a county voluntarily participate in the reappraisal program in order to be eligible in the reappraisal loan fund?

c. Can the Tax Commission, in such case, deduct the cost of the program from money due the county?

d. Must a county vote a special tax levy to provide funds for its share of a voluntary reappraisal program if it has no other funds available for that purpose?

2. Do the provisions of Section 72-2-21.7, N.M.S.A., 1953 Compilation (P.S.) providing for an additional distribution of ad valorem taxes to counties voluntarily participating in the reappraisal fund constitute an unconstitutional discrimination against counties that did not participate voluntarily?

3. Are the provisions of Sections 72-2-21.1 through 72-2-21.8, inclusive, N.M.S.A., 1953 Compilation (P.S.) a special law in violation of Article IX, Section 10 of our Constitution?

4. Does Senate Bill 33 violate the special legislative provisions of our Constitution, (H.B. 33, Section 72-2-21, et seq., N.M.S.A., 1953 Compilation (P.S.))?

### CONCLUSIONS

1. a. Yes

b. Yes

c. No

d. See analysis

2. No

3. No

4. No

## OPINION

### {\*25} ANALYSIS

Questions 1 (a), (b) and (c) are related and are discussed together.

The duties of the offices of county assessor and State Tax Commission are legislative and not constitutional. Disregarding, for the moment, the effect of the reappraisal statutes, the duties of the county assessor are set forth by Sections 72-1-1 through 72-3-12, N.M.S.A., 1953 Compilation, as {\*26} amended. The duties of the State Tax Commission are set forth in Sections 72-6-1 through 72-8-52.2, as amended. The reappraisal laws affect these duties of the assessor and of the Tax Commission. These Sections, being 72-2-21.1, et seq., N.M.S.A., 1953 Compilation (P.S.), provide for the execution of reappraisal contracts by each county to be approved by the State Tax Commission and by the Attorney General. When reappraisal is completed the assessor must use the values so determined in his assessment for the following years, and the Tax Commission is charged with the duty and given the authority to compel the use of such values.

Since the duties of the office of assessor and the Tax Commission are creatures of statute, the legislature is within its authority in passing reappraisal laws which affect these duties and the requirement of contracts under the program and use of the values so obtained would not violate any constitutional provision.

You ask whether it is unconstitutional for the State Tax Commission to charge the entire cost of the program to counties not voluntarily entering into reappraisal contracts. If the county does voluntarily enter into the program, one-half of the cost there of is borne by the State as the State's share of the burden of the program. The total charge for the reappraisal would be the same. If the county voluntarily participates, its fifty percent share of the cost is paid over a period of five years to a revolving fund established by the legislature. If the county does not voluntarily participate, the entire cost of the program in such county is paid from any amounts due the county. There is no stated period over which said sum shall be repaid.

The initial question is whether the giving of the inducement above mentioned for voluntary participation in order to expedite the program is constitutional. It is, unless it can be said that this is an unconstitutional classification. This question of reasonable classification is applicable only to persons. We are here dealing with subdivisions of the

State and it is not applicable. **Constitution of the United States of America. Library of Congress, 1964 Ed., Sovereign Camp W.O.W. v. Casados**, 21 F. Supp. 989, Affd. 305 U.S. 558, 83 L. Ed. 352, 59 S. Ct. 79. Thus, a county must voluntarily undertake the program in order to gain the incentives set forth by the reappraisal statutes.

The last of the related questions being considered together is that of whether the State may withhold money due the county in order to obtain from the county the share of the costs of the program to be borne by the county. There is no constitutional grant of any particular amount of revenue to any county. The money accruing from taxation or other sources and granted to the various counties for their use is granted by statute. There is no restriction as to the right to enact legislation requiring the withholding by the State of money due a county in order to pay the county's share of the cost of the reappraisal program, except insofar as such withholding would impair a contractual obligation of the county, such as a bond issue entered into previously.

The reappraisal legislation is not unconstitutional as an invasion of the duties of the county assessor and the county must enter the program voluntarily in order to participate in the statutory incentives provided. The State may withhold money due a county for payment of amounts owed by it under the reappraisal program except to the extent hereinbefore set forth.

The next question asked is whether a county must vote a special tax levy to pay the cost of the reappraisal program if it has no funds for such purposes. The answer to this question is implicit in the foregoing analysis. If there is voluntary participation, the {27} revenue anticipated by the county must be budgeted in such a manner as to pay for its share of the program over the five-year period. If the participation is not voluntary, revenues going to the county will be withheld. This also is a budget item insofar as county expenditures are concerned, and a special tax levy is not only not authorized but not necessarily required.

At this point, the writer notes that all counties are voluntarily participating in the program.

The writer further notes that the legislature believed that additional revenues to be realized from the program would add to the revenues of the county and the State, and would be sufficient to pay the cost of the participation in the program, whether voluntary or otherwise.

The second question as to distribution of county funds is likewise answered in the negative. The foregoing analysis is equally applicable to discrimination, incentive and other constitutional problems as to such increased distribution of income to counties. The pertinent sections call for increased revenues to school districts within each county completing a reappraisal program. There is no constitutional limitation, under the facts, of revenues that may be raised. There is no constitutional classification and no other constitutional bar to such legislation.

The next question is whether Article IX, Section 10 of our Constitution is violated by the statutes relating to reappraisal. This section, in substance, provides that no county shall borrow money except upon a majority vote of the qualified electors in favor of the issuance of bonds to secure repayment of the borrowed money. The money so borrowed can only be used for certain specified purposes. Reappraisal is not one of the specified purposes.

This constitutional provision contemplates that the county will exercise its initiative in order to supply needed facilities. This requires a county to obtain the funds necessary for this purpose from a competitive source -- usually a private source. The county obligates itself to repay such funds by the issuance of bonds which constitute a contractual obligation of the county. The constitutional provision does not contemplate expenditures to be incurred in the required governmental processes of the county, such as is the case here. Our Constitution requires that ad valorem taxes shall be levied in proportion to the value of the property and shall be equal and uniform upon subjects of taxation of the same class. Article VIII, Section 1. The reappraisal act is the legislative effort to provide the machinery whereby this constitutional mandate can be complied with. It is providing the means whereby the county can comply and there is no borrowing of money in the sense of the constitutional prohibition. In substance, it enables the county to carry out the mandate of the Constitution and of the legislature from the additional revenues to be derived therefrom.

We also note that if this is construed to be borrowing of money by a county, it is under legislative sanction and is between governmental agencies. As such, the reasoning of **Wiggs v. City of Albuquerque**, 56 N.M. 214, 242 P.2d 865, is applicable. The court was construing Article IX, Section 14 of our Constitution, which prohibits the lending of credit or making of a loan by the State, any county, school district or municipality to or in aid of any person, association or public or private corporation. The court stated at page 226:

"But we have held this provision has no application where the lending of credit is **under legislative sanction by one subordinate governmental agency to another.**"  
(Emphasis added.)

Since we have the same basic fact situation, if this is borrowing {28} and lending, the same reasoning would be applicable and the constitutional prohibition would not be a bar to the carrying out of the provisions of the reappraisal program.

We are asked whether Senate Bill 33 violates Article IV, Section 24 of our Constitution prohibiting the passage of special legislation. We assume the reference is to House Bill 33, 1966 Session, which was enacted as Chapter 26, 1966 Session Laws and codified as Section 72-2-21, et seq., N.M.S.A., 1953 Comp. (P.S.).

There does not appear to be any special legislation contained therein within the constitutional prohibition. The Act applies equally to all counties and to all real property within the respective counties. The fact that the participation by a county was optional

under this Act does not make it prohibited special legislation since the option was offered to all counties upon the same basis. Similarly, the fact that certain incentives were offered to induce such participation does not render it special legislation within the meaning of the constitutional prohibition. This inducement has been discussed in a foregoing part of this opinion.

We find nothing in the Reappraisal Act that violates our Constitution.

By: James V. Noble

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