

Opinion No. 12-909

June 19, 1912

BY: FRANK W. CLANCY, Attorney General

TO: Hon. William C. McDonald, Governor of New Mexico, Santa Fe, N. M.

TAXATION OF LANDS.

County Commissioners have no authority to fix the valuation upon lands for purposes of taxation.

OPINION

{*45} I have before me by reference from your office the letter of G. W. Gillespie, Assessor of Colfax County, dated June 8, with which he encloses copy of an order made by the County Commissioners of his county on June 6th, and in accordance with your request I have to say that I can find in the statutes of New Mexico no authority for the making of such an order as the one referred to.

It appears from Mr. Gillespie's letter than he has attempted to make a uniform valuation, as nearly as possible, throughout the county on a basis of 35 per cent of the actual value of the property, and he says that this basis of valuation is acceptable to a majority of the people, and was agreed upon between the County Commissioners and himself at the February meeting of the Board of County Commissioners, who at that meeting fixed the valuation of lands in Colfax County. Notwithstanding this previous agreement, at the June meeting the County Commissioners made the order referred to, reducing the valuation of all kinds of property with the exception of lands, 10 per cent.

At the outset I may say that there is absolutely no authority of law for the County Commissioners to fix the valuation upon lands as Mr. Gillespie says was done at the February meeting. The law commits the valuation of all property in the first instance to the assessor, {*46} subject, as hereinafter stated, to a limited revision by the County Commissioners. As a matter of convenience it might be well if in all counties such an understanding could be had between the assessor and County Commissioners so as to avoid later conflict. At the same time there would be nothing in such action which would so bind the County Commissioners that they could not when sitting as a board of equalization, make orders inconsistent with the previous agreement.

The commissioners, however, have no authority to do more than is specified in Section 4048 of the Compiled Laws of 1897. That section declares that at the June meeting the board shall "have power to supply omissions in the assessment roll, and, for the purpose of equalizing the same, may increase, diminish or otherwise alter and correct any assessment or valuation, except where such valuation is fixed by law;" and further, at either the June or July meeting, "said board shall hear appeals and complaints of

those dissatisfied with the assessment by the assessor, and shall decide the same, as in their judgment is proper and right."

It needs but little examination of this statutory language to show that the county board of equalization has no power to make a general increase or diminution of the assessment or valuation of the property of the county as a whole or of any class or classes of property, as the board of Colfax County has attempted to do. The board is authorized for the purpose of equalizing, to increase, diminish or change and correct any particular assessment or valuation, and not to make a blanket raise or decrease over the whole county. Some years ago the Territorial Board of Equalization, which possesses a similar statutory power to equalize the assessment rolls of different counties by raising or lowering the valuation thereof, undertook to make a general uniform 10 per cent increase in the valuation over the whole territory, and it was held that this was beyond the power of that board.

I may add that the reasons assigned by the board of Colfax County for their action would not be good ones, even if the board had the power to do what it has done. Their principal reason appears to be that the assessors of other counties are not increasing the assessed valuation of property, and therefore they determine it shall not be increased in their own county. The State Board of Equalization will undoubtedly exercise the power already referred to, to bring about uniformity in the valuation of property among the various counties, and to see that no injustice is done to Colfax County, or any other county which may increase its valuation. Attention should also be called to the fact that all valuations which aim at anything less than the full value of the property are in direct violation of the law, as will be seen by reference to the oath required of the assessor by Section 4046.

I return Mr. Gillespie's letter herewith.