

Opinion No. 14-1382

November 7, 1914

BY: FRANK W. CLANCY, Attorney General

TO: Mr. O. N. Marron, Treasurer, Santa Fe, New Mexico.

RAILROADS.

As to who should collect taxes imposed on sleeping car companies.

OPINION

{*242} I have before me your letter enclosing another from Mr. John D. Ferguson, Tax Attorney for the Pullman Company, relative to the taxes on that company, written in response to an inquiry from you regarding those taxes for the year 1914, and you ask my opinion as to whether those taxes should be paid to the county collectors or directly to the state.

Mr. Ferguson says that he assumes that your inquiry referred to taxes under Chapter 102 of the Laws of 1907, but that under Chapter 81 of the Laws of 1913 his company was assessed by the State Board of Equalization, and in 1913 paid taxes to the tax collectors of the various counties.

After careful consideration, I feel compelled to say that in my opinion the provisions of Chapter 102 of the Laws of 1907 are no longer effective, and that they have been displaced not only by the Act of 1913 to which Mr. Ferguson refers, but also by Section 1 of Article VIII of the Constitution. Perhaps I should modify that statement so as to apply only to Section 4 of the Act of 1907. The other sections which require a report to be made to the Auditor and prescribing penalties for failure to comply therewith, may be considered as still in force, and in accordance therewith, it seems that the Pullman Company has made such reports in both 1913 and 1914 from what Mr. Ferguson says. As he says, there is no other statute providing for a report from sleeping car companies and, therefore, they assumed quite properly, as I think, that the auditor would submit the report to the State Board of Equalization.

Section 1 of Article VIII of the Constitution provides that the rate of taxation shall be equal and uniform upon all subjects of taxation. By Section 4 of the Act of 1907, an arbitrary valuation is fixed upon the sleeping cars and a rate of taxation is fixed at \$ 1.50 for each \$ 100 of valuation, and this rate is intended to be for all purposes, both territorial, now state, and county taxes. It is obvious at once that a quality and uniformity would be impossible {*243} under any such rate of taxation and that this is in conflict with the constitutional provision. I believe it is also by clear implication in conflict with the last expression of the Legislature on the subject in Chapter 81 of the Laws of 1913, which provides that the State Board of of Equalization shall ascertain the true value of

all property belonging to sleeping car companies used by them in the operation of their sleeping car lines, and after having ascertained that value, it is made the further duty of the Board to fix a valuation for the purpose of taxation of one-third of the true value "and to immediately certify the same to the Boards of County Commissioners of the several counties of the state in which such property is situated."

There is included within this statute, the ascertainment of the true value of property of other corporations, including banks, and the value of live stock throughout the state. The implication is strong of an intention to put the property of sleeping car companies in the same category as the other kinds of property mentioned in the statute, and to treat it the same as those other properties, from which it would follow, necessarily, that it must be taxed in the state and in the counties the same as the other properties, and that the collection of taxes thereon should be the same as to all the different kinds of property mentioned.

This view is strengthened by the further provisions of the act as to the ascertainment of the true value of other kinds of property within the respective counties and prescribing the duty of the county commissioners to approve the assessment roll after it is revised and corrected, and to levy taxes for the year, provided by law, the tax roll being made up by the assessor in accordance with Section 5 of the act which requires him to list all property for taxation at the valuations fixed by the State Board of Equalization and the Boards of County Commissioners. Under the Act of 1907, the sleeping car property did not go upon the county tax rolls at all.