

## Opinion No. 14-1405

December 29, 1914

**BY:** FRANK W. CLANCY, Attorney General

**TO:** Honorable O. N. Marron, State Treasurer, Santa Fe, New Mexico.

### TAXATION.

Express companies should pay taxes in the several counties under the provisions of Chapter 81 of the Laws of 1913.

### OPINION

{\*265} I find on my desk a letter of December 24 from J. W. Newlean, vice president of the Wells Fargo and Company Express on the subject of taxation of that company, to which you have attached the auditor's warrant for \$ 850.80, payable to the company which, it appears from Mr. Newlean's letter, must have been sent to the company by you, although he states in his letter that you returned the company's check for that amount. Mr. Newlean states that the statute under which he was paying two per cent on gross earnings is to be found in Chapter 82 of the Laws of 1901, which means, however, 1891, the statute re-appearing in the Compiled Laws of New Mexico as Section 3927, but this statute is superseded as to the taxation of express companies by the provisions of Chapter 81 of the Laws of 1913. Reference to that statute will show that the State Board of Equalization was charged with the duty of ascertaining the true value of all property belonging to express companies used by them in the operation of their express lines, so that when such true values were finally determined, the board was to fix as a valuation for purposes of taxation, one-third of such true value to be certified to the boards of county commissioners of the several counties. There is a further provision of a like character as to the duty of the boards of county commissioners, and then follows in Section 5, a statement of the duty of the assessor to assess all property for taxation at the valuations fixed by the said boards respectively.

It might be said that the earlier statute of 1891 is still left in force and that Chapter 81 of the Laws of 1913 contemplates an additional tax, the first being a percentage upon the gross receipts of the company's business and the second a tax upon the property of the company used in the operation of its express lines. I am not willing to concede that the legislature ever had such an intention, and even if it had I believe it would have been unavailing in view of the constitutional provision which was in force up to the 3rd of November, 1914, that the rate of taxation should be equal and uniform upon all subjects of taxation.

I believe it will be found that this express company is assessed in each county where it has any property in accordance with the valuation fixed by the State Board of

Equalization, and it should pay the tax upon those assessments in the several counties and should not pay a tax in accordance with the statute of 1891.

{\*266} I return herewith the letter of Mr. Newlean and the papers thereto attached.