

Opinion No. 15-1678

November 10, 1915

BY: FRANK W. CLANCY, Attorney General

TO: Mr. Chester A. Hunker, Assistant District Attorney, Las Vegas, New Mexico.

Tax levies under provisions of Chapter 54 of the Laws of 1915.

OPINION

{*250} I have your letter of yesterday enclosing another from Mr. Earnest, Secretary of the Tax Commission, in reference to Mora County tax levies, and you ask me for my views of the matter.

I am perfectly sure that the levies for all county purposes and uses must, in accordance with the provisions of Chapter 54 of the Laws of 1915, be limited to five mills on the dollar. This is the purport of Mr. Earnest's letter, and you seem to take the same view. If there is any difference of opinion between Mr. Earnest and your office, or between him and the County Commissioners, it is as to the interpretation of the provision that the former tax levies, in force at the time that Chapter 54 took effect, shall be proportionately reduced so that the aggregate amount of the levies shall not exceed the five mills limitation. Mr. Earnest applies to the former levies for the purposes for which the County Commissioners now propose to make levies, a proportionate reduction of each, so that with the levies for court funds and special bridge fund, the total will not exceed five mills. The levies proposed by the County Commissioners do not exceed the five mills limit, as you say in your letter, but notwithstanding that fact, their levy for general county purposes greatly exceeds the maximum limit shown by the proportionate reduction from the former maximum of five mills. Each of the other proposed levies are far below the maximum {*251} indicated by the proportionate reduction, so that the total, including the excessive general county levy, just reaches five mills. I am unable to see how it is possible to make any levy this year for any one purpose which will exceed the maximum indicated by a proportionate reduction of all of the maximum rates for the purposes for which levies are actually made.

If the legislature had omitted the unfortunate word "proportionately," there would be no difficulty and the proposed levies in this case would be quite correct. I think it is highly probable that with the levies not exceeding the five mill limitation, the most of the tax-payers would pay without question, but as you know, some of the largest tax-payers in the state make it a part of their business methods carefully to scrutinize every item in the tax levies and to refuse to pay any tax which is not strictly authorized by law. It would, therefore, be dangerous, to say the least, to leave anything in the proposed levies which is even of doubtful validity.

I return Mr. Earnest's letter for your files.