

## Opinion No. 18-2103

July 2, 1918

**BY:** MILTON J. HELMICK, Assistant Attorney General

**TO:** Honorable L. J. Charles, State Highway Commission, Santa Fe, New Mexico.

Classification of Counties for Bridge Building Purposes. Construction of Sections 1303, 1304, 1305 and 1306, Codification of 1915.

### OPINION

We have your recent favor wherein you ask for a construction of Sections 1303, 1305 and 1306, of the 1915 Codification. Section 1303 classifies the counties of the State for bridge building purposes, into three classes, according to the assessed valuation. Section 1305 and 1306 place limitations upon the amounts to be expended for bridge construction in each of the three classes of counties. The difficulty in construing these sections arises from the fact that they were passed in 1913, at a time when assessment for taxation purposes was made upon a one-third valuation, under the provisions of Section 5434. Since the passage of Chapter 54, of the laws of 1915, all property is assessed at its full valuation. The result is, that the assessed valuation of every county in the state is now large enough to place every county in Class A, if the amounts specified in Section 1303 are to be literally followed. If the amounts mentioned in Section 1303, are still to be used as a basis for classification, there would be but one class of counties, and as a result the limitations contained in Sections 1305 and 1306, would be inoperative, except as to limitations prescribed for Class A, counties.

You wish to know whether Sections 1303, 1305 and 1306, can be said to be repealed by Chapter 54 of the Laws of 1915, which provides for the assessment of property at its full value. Repeals by implication are not favored, and since the subject matter of the Bridge Law, and Tax Law, are entirely different, and since there appears in the latter law no evidence of any intention to repeal any part of the bridge law, and since the 1915 tax law in no way refers to the bridge law, we do not think that the bridge law, or any part of it can be said to have been repealed. The question then arises as to the construction to be placed upon the Bridge Law Sections: Are they to be literally construed, and all counties placed in Class A, or, are the sections to be construed in the light of the one-third method of valuation, obtaining at the time of their passage?

This question of construction is a very difficult one, and after considerable search, we have been unable to find any authorities which bear even remotely on the question. It is also difficult to apply the familiar rules of statutory construction to the questions you ask. It seems to us, however, that in this matter the courts would be inclined to get at the intention of the legislature in providing the classification of the counties, and the limits of expenditures. The intention of the legislature was certainly clear at the time of the passage of the bridge act, and we think it is equally clear that in enacting Chapter 54 of

the Laws of 1915, the legislature entertained no intention to depart from the salutary limitations that had been enacted in the bridge law. We do not believe the intention of the legislature, as expressed in the bridge law, could be subsequently defeated by the enactment of a law which has no reference to the bridge law. While it will be a very unusual, and perhaps strange construction, it is our opinion that the bridge law section should be construed at the present time, in the light of conditions existing at the time of their passage. It is therefore our opinion that the amounts stated in Section 1303 should be applied to a one-third valuation of the counties, and that the same principle should be applied to sections 1305 and 1306.

You understand that statutory construction is a rather uncertain matter, and that in this opinion we are merely attempting to construe the sections in harmony with the intention of the legislature, and that we are trying to predict the view that the courts of the state will take if the questions are ever brought to them.