

Opinion No. 19-2197

February 18, 1919

BY: HARRY S. BOWMAN, Assistant Attorney General

TO: State Tax Commission, Santa Fe, New Mexico.

Authority of Tax Commission to Reconsider Action Determining Values Railroad Property.

OPINION

In reply to your oral request for an opinion as to the right of the Commission to reconsider its action taken at the November meeting in placing valuations upon the property of some of the railroads in the state, we wish to advise you as follows:

There are two phases of the question to be considered; first, as to the inherent right of the Commission to modify or change valuations placed upon property after the meeting wherein the constitution provides valuations shall be placed upon this class of property; and second, if there is such a right inherent in the Commission, as to what steps are necessary in order to permit of such action.

It is the opinion of the writer that the Commission has the right to reconsider any action it may have taken in connection with the valuation of taxable property, so long as it has taken no step which estops further action.

Section 4 of Chapter 54 of the Laws of 1915, the act creating the State Tax Commission, and defining its powers and duties, provides that at the regular meeting on the third Monday of November, the Commission shall determine the actual valuation of all property belonging to all railroads, telegraph, telephone, express, sleeping-car, and transmission companies. It then goes on to provide that the Commission shall certify to the assessors of the respective counties the actual valuation of such property, and that the assessor shall place the valuation so certified upon the assessment book, and that the valuation so determined and fixed by the Commission shall be final and binding upon tax officials in the state.

In section 6 of this act, it is provided that the Commission shall have the power to increase or decrease the total valuation of all property in each county subject to taxation, except the property, the valuation of which shall have been fixed by previous orders of the Commission, etc.

It will appear, therefore, as though the Commission would be estopped to change any valuation after its July meeting, but I find nothing in the act which would imply that the Commission would have no right to reconsider its action in regard to property valuation at any time prior to this meeting.

I understand that the certificate required by section 4 has not as yet been made, and therefore the question as to the right to alter the valuations or reconsider the action of the board after the certifying of the valuations to the county assessors is not involved. It is, therefore, my opinion that the board would have power inherently to change any valuations made at the November meeting so long as nothing has intervened to estop it from so doing.

There is some question, however, as to the right of the board to act at this time unless your records show an adjournment from the November meeting to the various intervening meetings and to the one now being held and of a continuation of such November meeting so that it may not appear that the November meeting had finally adjourned. The right to take any further action after the final adjournment of the meeting provided by statute for the taking of such action raises a rather grave question.

The second question is as to the manner in which the Commission shall proceed in order to legally accomplish the proposed desire. All of the railroads, the valuation of whose property had been determined upon by the Commission at the November meeting, should be notified of the time and place at which the action of the Commission is to be reconsidered in order that their representatives may be present.

I believe that with the foregoing steps, your action in reconsidering valuation of railroads as determined upon at the November meeting would be legal.

In conclusion, however, I might state that the question is rather a close one, and any action you might take may result in complications which might be troublesome.