

## **Opinion No. 20-2474**

January 26, 1920

**BY:** HARRY S. BOWMAN, Assistant Attorney General

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

Leaseholds Not Taxable in New Mexico.

### **OPINION**

Reply to your letter of the 15th instant, addressed to Mr. Askren, in regard to the authority of the Commission to tax leaseholds, has been delayed owing to the necessity of making a thorough investigation regarding the inquiry propounded and our desire to make a thorough search of any cases that might be of value upon the subject.

We agree with you in your statement that the leasehold is property, as it is so held by all elementary textbook writers upon the subject of real and personal property, but we are at a loss to understand why a holder of a lease should be taxed upon the leasehold because he has an advantage over a person who has bought his land and owns it in fee. If the leasehold is taxable at all it must be so because of the fact that it is held to be property within the taxing laws of the state, and not because the person who leases has had business foresight enough to lease his land from the state, or some other person, at a nominal rental rather than to purchase it outright.

Again, if the owner of a lease from the state to state lands is subject to taxation upon his lease, then so is the owner of any other lease from owners of lands other than the state, as it would not be possible to discriminate in favor of the leaseholder from an individual or a corporation and against the leaseholder from the state. We take it from your letter that it is your desire to tax the lessee of state lands and not the lessee of lands owned by private individuals, firms or corporations.

Aside from the foregoing, however, we find no statutory or other authority granting the right to levy a tax upon a lease. Leases are intangible property and do not therefore fall within the provisions of the constitution which provide that "taxes levied upon tangible property shall be in proportion to the value thereof."

We believe, in order to tax leaseholds, it will be necessary that there be direct legislative authority to do so. We find no States which levy such a tax.