

Opinion No. 20-2550

April 20, 1920

BY: HARRY S. BOWMAN, Assistant Attorney General

TO: Mr. Charles Springer, President, State Highway Commission, Santa Fe, New Mexico.

Levy of Special County Road Levies.

OPINION

In reply to your letter of the 17th instant requesting an opinion from this office regarding the levy of the tax and issue of debentures provided for in Chapters 3 and 4 of the Session Laws of the Extraordinary Session of 1920, to raise funds for the building of roads in Socorro, Sierra and Grant counties, wish to advise you as follows:

Your first question is, may the Board of County Commissioners of the County of Socorro levy the tax provided for in Chapter 4 so that the levy may be extended on the rolls for the years 1920, 1921 and 1922, without further action upon the part of the said Board of County Commissioners?

Our opinion is that no such authority exists. Section 2 of this act provides that,

"The said taxes are to be levied, assessed and collected at the same times and in the same manner as other taxes are levied, assessed and collected."

It would therefore be necessary that the 1921 and 1922 levies should be made in those years the same as all other taxes for such years. We can find no authority in the act which would justify the levy of the tax for the three years, at the 1920 meeting of the Board of County Commissioners at which the taxes are levied.

Your second inquiry is in regard to the right of the Board of County Commissioners to levy the tax for the year 1920, or for the entire three years, at its June meeting. Our answer to the first inquiry disposes of that part of the second question which relates to the levy of the tax for the three years.

The Board may, at its June meeting, provide for the levy of the 1920 tax, but, of course, it could not be assessed nor collected until the other taxes are assessed and collected, which will be at the regular meeting in September when the final assessment is certified, and at the regular times for the collection of the taxes in December and May.

Your third inquiry involves the right of the State Highway Commission to issue and sell certificates or debentures in anticipation of the collection of the said levies prior to the time of making the levy.

We are of the opinion that the State Highway Commission would be authorized to issue and sell such debentures prior to the date of the making of the levy provided that the Commission had any assurance that the amount of the levy would be sufficient to cover the amount of the debentures. Section 5 of the Act specifically provides for the issuing of debentures in anticipation of the collection of the tax levy, and the time of issuance and the amount of the debentures is left to the discretion of the Commission provided that the issue shall not exceed the estimated product of tax levies based upon collections for the preceding year. Of course, the Commission should be satisfied that a levy sufficient to pay the debentures will be made before the same are issued and sold.

Your fourth inquiry involves the right of the Commission to issue and sell such certificates or debentures in excess of the estimated amount of the tax for the current year.

Our reply would be the same as that given in answer to your inquiry number three. If the present Board of County Commissioners should, by resolution, bind itself to levy a certain amount of tax each year for the periods named, we believe that the Commission would be authorized to issue debentures in anticipation of the collection of the tax for the entire three years. The good faith of the county then would require the levy of the tax in the amount provided for in the resolution. This, however, would not be absolutely binding as the present Board of County Commissioners will probably change at the election to be held this year, and the successors might not feel that the levy should be made in accordance with the resolution. The Commission, of course, would not be certain then that the levy would be made and would be taking a chance upon the action that might be taken by the successors to the present Board.

The provisions of Chapter 5 providing for the levy of the tax in Sierra and Grant counties is worded somewhat differently and it is possible that by reason of such language, the levy for the entire three years in the county of Grant and for the two years in the County of Sierra, may be made during the present year.

You will note that Section 1 of Chapter 3 provides that the county commissioners are directed to make the levy,

"from the County of Sierra not to exceed two mills each for the years 1920 and 1921, and the County of Grant not to exceed two mills each for the years 1920, 1921 and 1922."

It is not quite certain that such a levy might be made during the year 1920. However, because of the fact that the law further provides that the tax shall be levied, assessed and collected at the same times and in the same manner as other taxes are levied, assessed and collected, but it is possible that this last language might be construed to limit the levy, the assessment and the collection to the same times as other taxes are levied, assessed and collected, and not to require the levy to be made for each of the years named in the act. We believe that the act could be construed so as to authorize

the levy of the tax in these counties during the current year for the entire three years, and the extensions made upon the rolls during the years named in the act.