

Opinion No. [29-109]

August 30, 1929

TO: Office of the Attorney General of New Mexico

TAXATION -- Attempt to extend provisions of previous legislation by reference held unconstitutional.

OPINION

I am sorry to note that your letter of August 8, asking for an opinion from this office as to the constitutionality of Chapter 19 of the Laws of 1929 providing for a half mill tax levy in San Miguel County and a half mill tax levy in Guadalupe County for the years 1929-1930 and asking further for the opinion of this office as to Chapter 194 of the Laws of 1929, providing a tax levy of one half mill in Taos County for the construction and improvement of state highways, remains unanswered.

In both of these chapters the attempt is made to extend the provisions of previous legislation in the one instance of Chapter 144, Laws of 1927, and in the other of Chapter 123, Laws of 1927, by reference only and without setting out the provisions of such chapters in full.

Section 18, Article IV of the Constitution of the State of New Mexico is as follows:

"Section 18. No law shall be revised or amended, or the provisions thereof extended by reference to its title only; but each section thereof as revised, amended, or extend shall be set out in full."

This section was before the Supreme Court of the State in the case, State vs. Armstrong, 31 N.M., 220 and the decision of the court was in brief and as to this point that such attempted enactment was in violation of the section of the constitution above quoted.

A recent decision of the District Court of the First Judicial District, holds another act of the legislature to be unconstitutional on the same ground.

We are of the opinion that Chapters 19 and 194 of the Session Laws of 1929 are ineffective to accomplish the purposes intended and that the special tax levies therein provided for cannot be enforced.

It is probable that by this time you have certified the tax levies to the various taxing officials including the taxes attempted to be provided for in these chapters. This probably is what you should have done anyway irrespective of your personal opinion or the opinion of this office, in that it is only by decision of the court that the constitutionality or unconstitutionality of a statute may be authoritatively determined. To this office it

seems probably that in a proper proceeding by a tax payer affected the collection of such taxes might be enjoined.