

Opinion No. 31-140

May 2, 1931

BY: E. K. Neumann, Attorney General

TO: Hon. Byron O. Beall, Chief Tax Commissioner, Santa Fe, New Mexico.

{*68} Your letter of April 28, 1931 calls for an interpretation of a portion of Section 11, Article 9 of the Constitution of the State of New Mexico, which reads as follows:

"No school district shall ever become indebted in an amount exceeding 6 per centum on the assessed valuation of the taxable property within such school district AS SHOWN BY THE PRECEDING GENERAL ASSESSMENT."

In construing this section, we are confronted with the proposition of determining what constitutes the preceding general assessment and it will therefore be necessary to refer to the numerous sections of law regarding assessments and valuations.

By Section 141-414, New Mexico Statutes, Annotated, 1929 Compilation, taxes must be paid in December and May or they become delinquent on these dates.

By Section 141-218 the assessor on or before April 1st is required to make his assessment and deliver the assessment roll to the County Board of Equalization on or before the first Monday in April. This matter is now handled by the County Board of Appraisers, as provided in Section 33-4801. These valuations are conclusive for assessment purposes.

Section 141-201 provides for the listing, assessment and taxation of the property on the first day of January of each year. And, by Section 141-230 the County Board of Equalization is empowered to make revision, correction and completion of the assessment roll, and may, at its meeting on the first Monday in April, increase, diminish or otherwise alter and correct any assessment or valuation, unless such valuation has been fixed by law or by the State Tax Commission. This section further provides that said Board shall hear appeals and complaints of those who are dissatisfied with their assessments.

Further provision is made for appeal to the State Tax Commission by Section 141-508 and hearings upon same are to be held in June of each year.

Certain classes of property, designated in Section 141-502, are to be assessed by the State Tax Commission and such assessments shall be certified to the local assessors of the respective counties. This is to be done, of course, after the meeting of the commission on the first Monday in March of each year, as provided in said section. Such certification is then to be placed upon the assessment roll of the county for the

year for which determined and taxes shall be levied thereon as in cases of other property.

It is the duty of the Board of County Commissioners, sitting as a Board of Equalization, to complete the revision, correction and equalization of the assessment rolls, and deliver the same to the assessor on or before the first Monday in May of each year.

The powers of the State Tax Commission are enumerated in Section 141-507 and paragraph one of said section gives the commission general supervision over the administration of the assessment and tax laws, Boards of Equalization, and all officers having power of levy and assessment, in order that all property subject to assessment shall be placed on the tax rolls and assessed at its actual value. And paragraph 9 of this section gives the commission the power of reassessment under certain conditions.

By paragraph 3 of section 141-508 the State Tax Commission, as the conclusion of hearings of appeal held in June, shall make its order thereon and same shall be certified {*69} to the County Board from which the appeal was taken.

Valuations of live stock and grazing land for assessment purposes are made by the State Tax Commission on the 3rd Monday of November of each year, as provided in Section 141-510. And, by Section 141-1304 and 141-1306, it becomes the duty of the State Tax Commission to determine the value of private cars, send out notices of assessments and prepare, on or before the first day of November of each year, an assessment roll and enter thereon the assessed valuation of such private cars.

The collection of the production tax on oil and gas wells is a matter within the jurisdiction of the State Tax Commission and the Tax Commission is required by Section 97-402 to certify, from the returns, the net value of the quarterly output of such oil and gas. As a matter of fact these returns and assessments are to be made every three months during the year.

From all the foregoing citations of law, it is apparent that the matter of the assessment of property actually requires the greater part of an entire year, if it is considered that the actions of the various taxing officials constitute and become a requisite item of such assessment.

In the case of *Steinbrenner vs. City of St. Joseph* 226 S. W. 890 there has been construed a constitutional provision similar to the one here under consideration. The Court held in this case that the words "assessment" and "last assessment" meant a completed assessment, that is one which had passed through all the state agencies which have to do with property assessment.

In *Parker vs. Clatsop Co.* 138 Pac. 239 the same rule was followed and the Court, in its opinion, used this language:

"It is apparent, from a review of the several sections of the statute, that the County Assessors of the Counties do not assess all of the assessable property found in their counties, and that the Board of Equalization equalizes only the value of the property so assessed, while the State Tax Commission assesses and determines the valuation of certain public utilities. Consequently, the assessed valuation of a County is the valuation found by the assessor, plus the valuation of those public utilities ascertained by the Tax Commission. . . Therefore, when the legislature used the expression 'the assessed valuation of the county' it meant the consummated act of all the agencies employed in determining the amount and value of property available for taxation."

In the case of *State ex rel Blades vs. Wabash Railroad Co.*, 158 S. W. 26 the Court construed a part of the State Constitution which prescribed the method of ascertaining the assessed valuation of Counties and carefully considered that part of the Constitution, which reads as follows:

"The rate herein allowed to each County shall be ascertained by the amount of taxable property therein, according to the last assessment for state and county purposes."

Numerous cases were cited in the opinion, and it was held that the approval of all of the agencies was required in order to constitute the last assessment.

In view of our various statutory provisions above cited, and in view of the authority set forth in the case, it appears to us that a distinction should be drawn between the words "last present assessment" used in our Constitution and the words "preceding assessment." In this connection then, we have a present assessment as of January 1, 1931, but this assessment does not become conclusive or final until the various state agencies and taxing officials of this state have had the opportunity to make such changes or corrections as may be necessary and until the proper certifications by the State Tax Commission have been made, and until these matters have been given attention there is in fact no final assessment of the taxable property. This, of course, can only mean that the last general assessment, that is the last final assessment, and the assessment which is conclusive, would be the assessment shown upon the tax rolls for the preceding year. And, it is our opinion, that this is the correct interpretation to be placed upon our Constitutional provisions above quoted.

{*70} In conclusion, therefore, we are compelled to hold that the assessment to be used for the purpose of determining the amount of bonds to be issued by a school district should be the last final assessment as shown by the tax rolls for the last preceding year, and after having been acted upon by the various taxing boards and officials in this state.

By Frank H. Patton,

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