

Opinion No. 31-211

July 17, 1931

BY: E. K. Neumann, Attorney General

TO: Honorable J. M. Lujan, State Comptroller, Santa Fe, New Mexico.

{*86} Your letter of July 14th, 1931, asks whether or not a county may levy a special tax in excess of the 5-mill limitation for all county purposes and uses to produce funds with which to pay the state for audits made by the State Comptroller as required by law, such audits not being for the current year.

The authority to levy a tax to pay for such audits is found in Section 134-507 of the 1929 Code, the pertinent part being as follows:

" . . . When any county or other political subdivision, institution or unit hereinabove referred to may not have funds available to bear its proper share of said expenses, then such account shall be held by the comptroller, and any such unit becoming indebted to the state of New Mexico by reason of this act is hereby authorized and required to include in its next succeeding annual tax levy a special levy sufficient to meet and pay this charge. When an amount sufficient to meet such obligation is available, the county treasurer of any such county shall immediately pay the same into the state treasury, there to be credited to the fund above created."

The maximum rate of taxation for county purposes is fixed by Section 33-5601 of the 1929 Code, being as follows:

"The boards of county commissioners of the various counties of the state shall be authorized to levy an annual tax of not to exceed five (5) mills on the dollar upon the assessed value of all taxable property in their several counties, for current expenses."

It is generally recognized in this state that a later law does not repeal an earlier statute by implication, unless there is such a conflict between the two statutes, relating to the same matters, that neither is, nor can be construed to be, independent of the other. An examination of the audit cost law and the maximum taxation statute reveals that there is absolutely no conflict between them and each, standing alone, is independent of the other.

A most liberal construction upon the audit cost statute, in the light of the tax limitation law, would be that the County Commissioners must levy sufficient funds to pay the state for the required audits, **within the** five-mill limitation, and such is our construction thereof.

We realize fully the problem with which you are faced, but are forced to the construction above stated. In as much as our Supreme Court has held the "Bateman Act" not

applicable to debts due the state, a levy to care for the cost of audits of past years can be made, but can be made only within the limitation as aforesaid.

The Supreme Court has also held in *A. T. & S. F. Ry. Co. vs. Lopez*, 20 N.M. 602, that, a levy to satisfy a judgment obtained against a county, may be made in excess of the 5-mill limitation, under authority of Sections 33-3704 and 33-5602 of the 1929 Code.

Therefore, it is our suggestion that, in counties where a levy cannot be made within the limitation to satisfy the cost to the state for audits previously made, you reduce such claims to judgment and thereby compel the necessary levy to satisfy such judgments.