

Opinion No. 31-58

February 14, 1931

BY: E. K. Neumann, Attorney General

TO: Hon. Arsenio Velarde, State Auditor, Santa Fe, New Mexico.

{*44} Regarding opinions given by me on February 3rd, and January 28th in connection with the County Officers' salaries in DeBaBca County, after further consideration, it is my belief that I was in error at said times.

I believe that those officers are entitled to draw salaries as officers of a third class county instead of salaries as officers of a fourth class county, at least after the present fiscal year unless the proper budget for the increased salaries has been heretofore made.

This conclusion is reached after a careful research and is based upon the fact that the law, which provides for a classification of counties was passed in 1923 and is not legislation which is passed during the term of the present officers tending to increase or diminish salaries of officers during their tenure of office within the meaning of Sec. 27 of Article 4 of the New Mexico Constitution. The act of the Auditor in reclassifying a county is merely a ministerial act, the classification having automatically been made when the final valuation has been determined prior to January 1st of each odd numbered year.

The law of 1923, Section 33-3219 of the 1929 Code, is mandatory in that it directs the Auditor to classify a county according to the valuation fixed for the various classes of counties. He can do nothing else and is guided by the valuation of each county as finally fixed for the previous year. The salaries are fixed, as is the classification, for the following two years at the time the valuations are finally fixed and automatically the officers, taking office, become entitled to salaries, as provided by law for counties of the particular class into which their county falls. The Act of the Auditor being merely ministerial in giving official recognition of the new classification.

Further reading of the New Mexico cases leads me to believe that the Courts construed the constitutional question, as I understood it and so expressed same in the letters mentioned, only in such cases where the laws were changed, amended and passed so as to affect salaries of officers then in office by the Legislature during the terms of these same officers. This is not the {*45} present case, and in my opinion, such distinction is the gist of the entire matter.

This question has caused me some little concern, but I am frank to state that I believe myself to have been in error when the opinions mentioned were rendered.