

Opinion No. 53-5876

December 18, 1953

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. Victor A. Breen District Attorney Tenth Judicial District Tucumcari, New Mexico

{*306} In your letter dated December 14, 1953, you state that taxes were assessed against personal property and a distraint warrant was subsequently issued by the County Treasurer to collect such personal property taxes. Prior to the issuance of the distraint warrant, the owner had transferred the personal property by Bill of Sale to another owner and you inquire whether the County had a lien on the personal property prior to the Bill of Sale.

Section 76-412 of the 1941 Compilation provides that taxes levied upon real estate shall be a lien thereon from the first day of January of the year in which the levy is made. However, no statute specifically makes personal property taxes a lien on the personal property, and in **State ex rel. Hall v. Ballow**, 26 N.M. 616, the Court held that personal property taxes are not a lien on real estate and quoted with approval text citations to the effect that in the absence of a statute making personal property taxes a lien on the property, no lien attaches.

Section 76-618 of the 1941 Compilation, authorizes county treasurers to issue distraint warrants for the collection of personal property taxes and provides for the seizure and possession of the property distrained. This section also provides that sales shall be made under distraint warrants in the same manner as sales upon levy of execution.

It is thus apparent that no lien attaches upon personal property for the taxes assessed against such property until a distraint warrant is issued and served and possession taken of the property. If the owner sells the personal property prior to the issuance of the distraint warrant, then it is our opinion that the distraint warrant may not be executed upon the property of a person other than the one owing the taxes.

By: C. C. McCulloh

Assist. Attorney General