

Opinion No. 58-54

March 14, 1958

BY: OPINION OF FRED M. STANDLEY, Attorney General Alfred P. Whittaker, Chief Assistant Attorney General

TO: Mr. Robert H. Sprecher, Assistant District Attorney, County Court House, Roswell, New Mexico

QUESTION

QUESTION

Do District Attorneys have statutory authority to compromise and settle actions instituted by them in their respective districts for the collection of delinquent personal property taxes?

CONCLUSION

Yes; see Analysis.

OPINION

ANALYSIS

We understand that your inquiry arises by reason of statutory provisions which place upon the county treasurer certain duties relating to the enforcement to tax collections, while other duties are placed upon the State Tax Commission, as illustrated by §§ 72-7-3 and 72-7-1, N.M.S.A., 1953, respectively. In Opinion No. 6140, issued by this office April 18, 1955, the power of the State Tax Commission and the county treasurers with respect to the issuance of distraint warrants for the collection of delinquent personal property taxes was specifically discussed. As therein indicated, the State Tax Commission has authority, in exercising the jurisdiction conferred upon it by § 72-7-1, to designate the various county treasurers as ex-officio tax collectors and agents of the State Tax Commission in the collection of delinquent personal property taxes. By Resolution of the Commission dated February 11, 1958, this has been done. This Resolution authorizes the county treasurers ". . . to issue distraint warrants and to institute legal proceedings, or such other action necessary, to reduce the claim for delinquent taxes to judgment, and to collect same." Pursuant to the foregoing, we are informed that suit would be brought by the County Treasurer and the State of New Mexico, ex rel the State Tax Commission.

In acting in the premises, the District Attorney acts pursuant to § 17-1-11 (1), which imposes upon him the duty:

"To prosecute and defend for the state in all courts of record of the counties of his district, all cases, criminal and civil, in which the state or any county in his district may be a party, or may be interested or concerned;"

The District Attorney's authority to compromise and settle any such action, once instituted, is found in § 17-1-15 which provides:

"The attorney general and district attorneys of this state in their respective districts, when any civil proceedings may be pending in their respective districts, in the district court, in which the state or any county may be a party, whether the same be an ordinary suit, scire facias proceedings, proceedings growing out of any criminal prosecution, or other wise, shall have power to compromise or settle said suit or proceedings, or grant a release or enter satisfaction in whole or in part, of any claim or judgment in the name of the state or county, or dismiss the same, or take any other steps or proceedings therein which to him may appear proper and right; and all such civil suits and proceedings shall be entirely under the management and control of the said attorney general or district attorneys, and all compromises, releases and satisfactions heretofore made or entered into by said officers are hereby confirmed and ratified."

The power of the District Attorney to bind county officials by his action in litigation in which he represents such officials was only recently affirmed in **State v. Board of County Commissioners**, 59 N.M. 9 (1955), quoting § 17-1-15. And the District Attorney's power to compromise and settle suits for the collection of delinquent taxes was specifically recognized in **State v. State Investment Co. et al**, 30 N.M. 491 (1925). The only indication of limitation upon such power of the District Attorney is found in the dissenting opinion of Hudspeth, J., in **Board of County Commissioners of Quay County v. Wasson**, 37 N.M. 503 (1933), suggesting, at 37 N.M. 513, that the power to confess judgment should be viewed as continuing to reside in county officials even after filing of a condemnation proceeding, and that even then the judgment must be a just one and one which by law the officers have a right to assume. This position has not been adopted by the Court.

We recognize that the statutory procedure for the collection of delinquent taxes which was considered in **State v. State Investment Co. et al**, supra. was modified by Ch. 127, Laws of 1927, establishing a new system for tax collection, which the Court, in **State ex rel Gibson v. Fernandez**. 40 N.M. 288 (1936), characterized as follows, at page 292 of its opinion:

"By the terms of the New Mexico statute, 'the power, jurisdiction and authority to collect all delinquent taxes' is vested in the state tax commission, and for that purpose and for that purpose it was 'granted all powers and duties' theretofore granted to the district attorneys of the state and to all special tax collectors or attorneys under existing laws. A reference to the previous statutes referred to will show that **this gave the tax commission full, complete and exclusive power, authority, and jurisdiction over all that function** of government necessary to be exercised (and the duty to exercise

them) **in collecting delinquent taxes, and left no power to be exercised by any other officer or authority"** (Emphasis added).

The procedure for the collection of delinquent taxes was again changed, however, by Ch. 27, Laws of 1934 (Sp. Sess). which imposed substantial statutory duties upon the county treasurer, with respect to the collection of taxes. See e.g., §§ 72-5-1, 72-5-3, 72-7-3, 72-7-4, 72-7-30. To that extent, as previously indicated in Opinion No. 6140, the powers of the State Tax Commission were clearly limited, with respect to the collection of delinquent taxes on both real and personal property. And county treasurers are still designated by statute as ex-officio collectors for their respective counties. See § 15-42-4.

We recognize also that pursuant to § 72-6-16, as amended (NMSA, 1953, 1957 P.S.), the attorney for the tax commission "**shall** appear in any court on behalf of the commission in any proceedings involving any question of taxation or public revenue; . . . (emphasis added)." Since we are advised that the State of New Mexico ex rel the State Tax Commission will be a party in contemplated actions for the collection of delinquent personal property taxes, we assume that the tax commission attorney will directly represent the commission, or that the commission will designate the various district attorneys and their assistants as assistant tax commission attorneys for this purpose, pursuant to § 72-6-17.

Under these circumstances, it is the opinion of this office that the District Attorney has full authority to compromise and settle any action instituted in behalf of the State ex rel its State Tax Commission and the County Treasurer, for the collection of delinquent personal property taxes. This authority is, of course, subject to the duty of this office to act, pursuant to § 4-3-2 (b), when in the judgment of the Attorney General the interest of the state requires such action, and to the authority of this office to act pursuant to § 17-1-15, empowering the Attorney General to compromise and settle civil proceedings, in the event of any conflict between the State Tax Commission and the District Attorney as to the propriety of a particular proposed settlement in a case within the authority of the Commission to act, as indicated in Opinion No. 6140.