

Opinion No. 58-77

April 8, 1958

BY: OPINION OF FRED M. STANDLEY, Attorney General Hilton A. Dickson, Jr.,
Assistant Attorney General

TO: Mr. Robert H. Sprecher, Assistant District Attorney, Fifth Judicial District, Roswell,
New Mexico

QUESTION

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1. With reference to Sec. 75-3-4, N.M.S.A. 1953 Comp. may a tax deed be executed and forwarded to the State Tax Commission by the county treasurer as a means of collecting delinquent water master assessment, or must a foreclosure suit be instituted?
2. In what manner should the provided for action be taken?

CONCLUSIONS

1. A foreclosure action should be brought.
2. See Opinion.

OPINION

ANALYSIS

The statutory provision above cited (Sec. 75-3-4 provides, as pertinent to the questions stated, the following:

"As soon as possible after the appointment of any water master, the state engineer shall prepare a budget of the estimated amounts required to pay the compensation and expenses of the water master and his assistants to the end of the then current fiscal year, and shall certify the same to the board of county commissioners of the county wherein the duties of the water master are to be performed, which budget shall specify the distribution of the amounts to be charged against and allotted to each water user or ditch owner, and which respective amounts shall be based upon the quantity of water received or to be received by each in proportion to the total quantities of water delivered or to be delivered under the water rights of all.

* * * *

When such budgets are received by the board of county commissioners, it shall immediately cause the county treasurer to extend upon the tax rolls of the county for the year contemplated in the budget, the amounts therein required to be raised and in accordance with the budget distribution thereof, and such respective amounts so distributed and entered upon said tax rolls shall be payable and shall be collected at the times and in the manner provided by law for the payment and collection of other taxes, and shall be a lien upon the property of the respective water users or ditch owners to the same extent other taxes levied are a lien thereon. . . ."

This law provides, in effect, a method for charging individual landowners or water users for special services rendered. No tax, however, in the sense contemplated by the Constitution, nor legislative enactments on real, personal or intangible property, is imposed by the section quoted. The nature and purpose of this statute was earlier considered in Attorney General's Opinion No. 5675, dated February 17, 1953, wherein the Attorney General said:

"Section 77-304 is concerned with the method of payment of the watermaster's salary. It provides that the assessment shall be made by the State Engineer and certified to the County Commissioners. The County Commissioners in turn then assess the proportionate amount for the payment of the watermaster against the water users, based upon the amount of water used by such water users. **This provision is not a tax but merely a method of collecting for the services of the watermaster.**" (Emphasis ours)

In view of the basis found in Sec. 72-8-1 for the sale of delinquent tax property, i.e., ". . . for the amount of the taxes, penalties, interests and costs due thereon . . .", it is our opinion that tax deeds may not be executed and forwarded to the State Tax Commission as a means of collecting watermaster assessments.

The law instantly considered (75-3-4, supra) specifically provides for the imposition of a lien against the property of delinquent users, thereby making available a legal remedy for the collection of extended assessments by foreclosure.

Finally, in keeping with the provisions of Sec. 17-1-11, it is our opinion that the District Attorney may initiate a foreclosure action in the name of the county treasurer interested in the particular assessment.