

Opinion No. 12-920

June 19, 1912

BY: FRANK W. CLANCY, Attorney General

TO: Hon. Howell Earnest, Traveling Auditor, Santa Fe, N. M.

DELINQUENT TAXES.

There should be but one advertisement and sale for each year's delinquent taxes, and there should be no advertisement and sale when only half of the tax is delinquent.

OPINION

{*59} I have before me by reference from your office the letter addressed to you of Mr. Lee G. Pearson, Treasurer of Quay County, as to which you have asked my opinion.

Mr. Pearson says that he has advertised the first half of the delinquent taxes for 1911 according to law, that the last half is now delinquent, but on July 5th he will write tax sales certificates to cover all real estate which shows not to have been satisfied before that date, these certificates running to Quay County; and he asks whether those certificates should be for all taxes against property, or merely for the first half which has been advertised. He adds that he understands the law that he should make such certificates to cover all delinquent taxes for the whole year, and for this view there is foundation in the statute as I will hereinafter indicate.

I think, however, that Mr. Pearson has overlooked some of the provisions of the act of 1899 under which the advertisement of delinquent taxes is made, or he would not fall into the error of thinking that he could make such certificates to cover anything except the taxes regularly advertised. By Section 23 of Chapter 22 of the Laws of 1899 it is provided that after receiving the amount for which real estate is sold, the collector shall execute and deliver to the purchaser a certificate of sale which among other things must show that the property was sold for taxes, and the amount thereof. Obviously the collector is certifying to the fact of a sale, and cannot include in that certificate any statement of taxes except those for which the property was actually sold. That certificate must state the facts as they exist when the sale is completed. Section 22 of the same act is one which provides for sales to the county and for the making of certificates therefor, and does not include that they shall be in any way different from the certificates described in the next section. To state it differently, the collector's certificate is as to the fact of a sale, and should certify nothing except what actually {*60} took place when the sale was made. The certificates should properly be made immediately after the sale.

Although not covered by what Mr. Pearson asks, what he says forces upon my mind the consideration of another important question, and that is as to whether the law authorizes advertisement and sale of property for delinquent taxes more than once for a

year's taxes. I am of opinion that there should be but one advertisement and sale for each year's taxes, and that it is not proper to advertise and sell when only half of the tax is delinquent. The practical doubling of expense and labor certainly ought to be avoided, unless the statute very plainly and clearly requires it. By Section 4066 of the Compiled Laws of 1897, which has been amended by Section 10 of Chapter 22 of the Laws of 1899, and by Section 1 of Chapter 96 of the Laws of 1901, one-half of a year's taxes becomes delinquent on the first day of December, and the other half on the first day of June following, and penalties must be added. It seems clear that the legislature was providing for a division of the year's tax in halves, not for the benefit of the public treasury, nor for the purpose of increasing the taxpayer's burdens, but for the purpose of making it easier for the taxpayer, instead of more difficult. This will be apparent by reference to the original revenue act of 1882 of which Section 54, which section reappears as Section 2859 of the Compiled Laws of 1884, provide that the tax for the whole year should become delinquent on the first day of November. This was changed in 1893 so as to provide for the payment in halves, and permit the taxpayer, if he choose, to keep half of the money in his own pocket for six months longer without paying interest or penalty thereon instead of having the money unnecessarily accumulate in the public treasury. This legislative intent to benefit the taxpayer would be largely defeated if he is thereby saddled, when delinquent, with the expense of advertisement and sale twice a year.

In addition to this the language of the act of 1899 indicates a sale for the whole year's tax, and harmonizes with what I have already said. Section 15 of that act provides for the advertisement by the collector of the delinquents, within ninety days after any tax shall become delinquent -- not for the advertisement of the half of a tax which may have become delinquent, but for the whole tax. In the same section it is required that the advertisement shall show the year for which the tax is due. In Section 17 of the same act the title of the cause to be set out in the complaint filed in the district court shows that it is a proceeding against persons and property described in a delinquent tax list for a year, and not in a delinquent tax list for one-half of the taxes of a year. In Section 18 of the same act is given a form of the order to be issued by the clerk of the court to the collector for the sale, and again it shows that the judgment rendered was against property described in the delinquent tax list of the county for a year. In Section 23 it is provided that the tax sales certificate shall show the amount and the year or years for which the taxes were assessed, and taxes are never assessed for half years.

All of the foregoing has reference to those sales of property where the delinquent taxes amount to not less than twenty-five dollars, and as to such delinquent taxes nothing can be found to show an intention to advertise and sell twice in a year. When we come, however, to the delinquent taxes amounting to less than twenty-five dollars, it is distinctly and clearly provided by Section 31 of the Act of 1899 that there shall be two advertisements and sales in each year, without the necessity of going into the district court to get a judgment. Clearly the legislature intended to distinguish between the two classes of delinquencies, and to provide a different method for the smaller ones. The wisdom of this discrimination may not be apparent, but we are bound by what the legislature did. If the sales to which Mr. Pearson refers are of property upon which the

delinquent taxes were less than twenty-five dollars, then it was correct to advertise and sell for the first and second halves separately.

I return Mr. Pearson's letter herewith.