

Opinion No. 13-1057

June 9, 1913

BY: FRANK W. CLANCY, Attorney General

TO: Honorable James R. Waddill, Deming, New Mexico.

DELINQUENT TAXES.

As to what constitutes a valid advertisement of sale of property for delinquent taxes.

OPINION

{*227} I have received your letter of the 7th inst. on the subject of sales of delinquent tax certificates, together with a letter to you from the {*228} treasurer and collector of your county. His letter certainly presents a serious question if we are compelled to consider that the new tax law requires him to advertise all of the tax sale certificates of property struck off to the county at any time in the past. I fear that is what Section 36 of Chapter 84 of the Laws of 1913 really means. A literal reading of the section, however, would make it entirely prospective and therefore applicable only to property struck off to the county at sales after the passage of the statute, so that it would only be as to property then struck off to the county that the treasurer must sell the certificates at the time of the next delinquent tax sale.

I see no way of making a valid advertisement without including everything specified in Section 36, including a brief description of the property, but I have no doubt that, if the worthless certificates, of which the treasurer writes, were omitted from the advertisement, it would be perfectly valid as to all the others which were actually included.

I suggest that you confer with Judge Neblett as to both of these matters with a view to seeing whether or not, in some form, you can obtain for the treasurer some direction from the court. You might possibly arrange to have a friendly injunction suit brought by some taxpayer to restrain the treasurer from advertising these worthless certificates, for which there is no hope of receiving bids, as involving a useless expense for the county. Such an order by the court would relieve the treasurer from all responsibility and would be a benefit to the county treasury.

You also ask as to the requirement that within forty-five days after the first day of June in each year the collector shall prepare, and cause to be published for not less than once in each week for four consecutive weeks, in a newspaper, the notice of the delinquent tax sale, whether the four weeks publication must be completed within the forty-five days, or would it be sufficient if the advertisement is begun within the forty-five days. As to this, my opinion is the same as yours, that the sale would be good if the

advertisement is begun within the forty-five days. I can see no good reason for holding otherwise.

I return herewith the letter from your county treasurer.