

Opinion No. 14-1410

December 26, 1914

BY: FRANK W. CLANCY, Attorney General

TO: Mr. A. W. Hockenhull, Clovis, New Mexico.

TAXATION.

Where property can be segregated, treasurer authorized to accept payment for taxes thereon.

OPINION

{*271} I have today received your letter of the 22nd instant. No apology or expression of regret is necessary on your part on account of calling upon this office for information or advice. We are only too glad to be of any possible service to you in such matters as those of which you write.

From what you say it would seem that there must have been in your county much more than the ordinary amount of inefficiency in the making of assessments, as you say that the treasurer estimates that in the past four years each tax roll will average at least two thousand errors, and that on the 1912 roll there appear about five hundred double assessments, and that there are frequent applications by tax-payers offering to pay taxes when their property, or a part thereof, is taxed with the property of other parties. You say the treasurer doubts his authority to accept taxes in the name of the real owner when the party has not been assessed for the property.

As to the double assessments, when one of them has been paid the treasurer should note the fact opposite the other assessment and accumulate a complete list of all such duplicity in assessments, and then, through your office, he can obtain a single order covering all such cases, enumerating them, and wipe out the other assessment.

Where property has been assessed in the name of the wrong party, if it is so assessed that the value can be segregated, I think it would be permissible for him to accept payment for the taxes on that part of the property from anyone who offers to pay claiming a right to do so, to whom he would give a receipt. In those cases where it is impossible to segregate the property, with its value, from other property with which it is assessed, as is frequently the case, I do not see that he can help the would-be tax-payer, but that it would {*272} then be necessary for the tax-payer to get some order of the court directing a change in the tax roll.

You say further that if the district attorney's office is compelled to obtain a correction of each error reported it will consume most of your time and cripple your office work. This would undoubtedly be true if you had to take up each error separately and apply to the

court for a separate order, but as a practical suggestion I would say that it might be possible for the treasurer to accumulate a large list of the errors and you could incorporate all of them in one application to the court, and in one order, so as not to consume so much of your time or that of the court. I pursued this practice while I was district attorney at Albuquerque, and was able to get such corrections made without any undue consumption of time. While I was district attorney the number of corrections to be made diminished from year to year, but at no time was the assessment in that county in as bad shape as assessments must have been in your county from what you write.

By accepting payment upon a part of property on the tax rolls, where it can be segregated with its value, the collector is not making any change in the tax rolls, but is acting in accordance therewith. There would be no difference in principle between his permitting a person who claims it, to pay on such part of the property, without paying upon all of it, and permitting an undoubted owner to pay upon a part of his property if he offered to do so. For instance, a man might be assessed for half a dozen pieces of real estate, with the value of each properly shown on the tax roll, and there can be no legal objection to his paying the tax upon one of those pieces, if he chooses to do so, leaving the others unpaid, no matter what his reasons may be. He might be compelled to pay the tax on one piece of property in order to effect a sale, or he might consider one piece of sufficient value to justify his paying the taxes, while the others might not be of such value, or he might be financially unable to pay more than a part and desire to preserve that which he considered of most importance to him.