

Opinion No. 18-2075

January 17, 1918

BY: MILTON J. HELMICK, Assistant Attorney General

TO: Hon. Lee R. York, Alamogordo, New Mexico.

Assessment of Both Land and Mortgage Not Double Taxation.

OPINION

We have your favor of the 7th inst., being further correspondence regarding the taxation of mortgages. In this letter you ask if it is double taxation to tax a mortgage and also the real estate which it covers, at full value, without deducting the amount of the incumbrance. As we wrote you in our letter of the 3rd, deduction of indebtedness can only be made from the valuation of money, notes and credits, and not from other property, under the statute of this State.

The question then resolves itself into the bare proposition as to whether or not, leaving aside all question of deduction, the taxation of a mortgage and the taxation of the land which it covers at full value, is double taxation. We think the rule is well settled that the interest of a mortgagor and a mortgagee in real property, being distinct and separable, and each being taxable property, there is no violation of the rule against double taxation involved in laying a tax on the mortgage or on the debt which it secures, although the land affected is also taxed to its owner at its full value. This is upheld by the case of *Stumpf v. Stors*, 156 Mich. 228, 120 N. W. 618, 132 Am. St. Rep. 521. The case is also reported in L. A. R. (N. S.) page 152 in Vol. 23, with a very extensive foot-note.

The rule above stated seems to have been sustained by the appellate courts in many states, among them Alabama, Arkansas, California, Iowa, Florida, Maryland, Michigan, Minnesota, Nevada, New York, Utah, Illinois, Pennsylvania, Maine and Missouri.

In our opinion under the statute of this State, the same rule should be followed, and we believe that your County Commissioners should see that both mortgages and the lands affected are taxed.