

Opinion No. 19-2293

June 4, 1919

BY: HARRY S. BOWMAN, Assistant Attorney General

TO: Mr. W. A. Losey, Cashier, First National Bank, Hagerman, New Mexico.

Payment May Be Made of Ad Valorem Taxes and Drainage Assessment Remain Unpaid.

OPINION

We are in receipt of your letter of the 2nd instant, asking for an opinion from this office regarding the right of the County Treasurer and Collector to refuse to accept the taxes upon the real and personal property of a person who refuses to pay the drainage tax imposed upon the same real estate for which the tender of taxes is made as above suggested.

You do not advise under what law the Hagerman Drainage District was created, but we assume that it was under the law of 1912, which appears as sections 1877 to 1958, Code 1915. Under the provisions of this act the assessments made against the property contained within the boundaries of the district are payable after their confirmation by the district court (section 1926, Code 1915).

If the assessments are not paid in accordance with these provisions, then they are to be certified to the proper officers and included upon the tax roll and collected the same as all other taxes upon land and personal property in this state (section 1932, Code 1915).

The tax rolls are so made up that a separate column is used for the record of the assessments against property for drainage purposes.

Under the provisions of the proviso contained in section 5484, Code 1915, a taxpayer is permitted to pay the tax due on any subdivision, lot or parcel of land or personal property without paying the whole of the taxes due, when the value of such subdivisions, lot or parcel of land or personal property can be ascertained from the tax roll or from the schedule returned to the assessor.

By virtue of the foregoing provisions of the statute law of this state, we are inclined to believe that the taxpayer may pay any part of the taxes that he may desire to pay without being compelled to make payment of any balance, so long as the taxes included in the tender can be separated from the remainder.

Under this holding the taxpayer would also be permitted to pay his regular state, county and city taxes upon his property, both real and personal, without being compelled to pay

any assessment for drainage purposes which may have been levied against his real property.