

Opinion No. 19-2412

October 25, 1919

BY: N. D. MEYER, Assistant Attorney General

TO: State Tax Commission, Santa Fe, New Mexico.

Publication of Notice of Tax Suit.

OPINION

Answering your request for the written opinion of this office relative to Section 3 of Chapter 43 of the Session Laws of 1919, the same being commonly called the "Publication Act," we beg to advise as follows:

Section 3 reads:

"That the notices of application for judgments and orders for the sale of property of any kind for taxes, or any other form of notice of sale of property for taxes, shall be by publication . . ."

As I understand, you wish to know if both the notice of application for judgment and order for sale of property, and the notice prescribed by Section 8 of Chapter 80, laws of 1917, to be posted after rendition of judgment as by said act provided to the effect that the property covered by the judgment will be sold, must be published in a legal newspaper, in view of the particular wording of said Section 3 of the "Publication Act."

We have thought this matter over considerably and have come to the conclusion that both publications are not necessary. If the legislators had used the connecting conjunction "and" instead of the alternative conjunction "or" the case might be different.

The writer is of the opinion that when the legislature inserted the phrase "or any other form of notice of sale of property for taxes," it meant and intended to cover other cases of sale of property for taxes where judgment and order for sale had not previously been made.

Therefore, we are of the opinion that where the treasurer gives notice by publication, that he will apply to the court for a judgment and an order for the sale of the property and that within thirty days from the date of such order to sell, he will sell the property, the notice required to be posted after judgment and before sale, by Section 8 of Chapter 80 of the laws of 1917, need not be published.

In this connection, we might mention that it is very probable that Section 3 of the "Publication Act" is unconstitutional altogether. This for the reason, as you see by

referring to said chapter, that said Section 3 is not defined or expressed in the title of the act.

Section 16 of Article 4 of the State Constitution provides, "The subject of every bill shall be clearly expressed in its title but if any subject is embraced in any act which is not expressed in its title, only so much of the act as is not so expressed shall be void."

We are merely making mention of this and do not wish to be understood that we are holding either one way or the other, it being a question for the Supreme Court to decide.