

Opinion No. 21-3015

June 17, 1921

BY: HARRY S. BOWMAN, Attorney General

TO: Mr. E. C. Gessert, Treasurer, Hagerman Drainage District, Roswell, New Mexico.

Segregation of Drainage From Property Tax For Purposes of Collection.

OPINION

{*68} In reply to your letter of the 15th instant submitting inquiries concerning the deduction of 8 per cent from the amount of delinquent drainage assessments certified to and collected by the County Collector, and also asking if the Treasurer and Collector should be permitted to segregate the drainage tax from the property tax and accept payment for the latter, I would advise you as follows:

Section 13, Chapter 12, Laws 1915, provides that:

"From all taxes and licenses of whatever character which have been collected * * * eight per centum shall be deducted and covered into the aforesaid county salary fund."

Section 1932, Code 1915, provides that the County Treasurer and Collector who places upon the tax roll delinquent drainage assessments shall collect them.

You will note that the direction to deduct the eight per cent for the salary fund applies to "all taxes and licenses of whatever character."

It would appear from the reading of this section, together with Section 1932, that the eight per cent should be deducted by the Treasurer and Collector as prescribed in Section 13, Chapter 12, Laws 1915.

In answer to our second inquiry, I would advise you that the Treasurer and Collector may accept the property taxes from persons refusing to pay the drainage assessment, but he would not be authorized to give a tax receipt until the latter assessment has been paid also. All that could be required of him would be a memorandum receipt showing the payment of a part of the taxes.

Section 1932, Code 1915, provides that the lien for the drainage assessment shall not apply to property other than that against which the assessment shall have been made, and in view of this provision, the other property of the tax payer would not be subject to the payment of the drainage assessment.