

Opinion No. 22-3371

April 10, 1922

BY: HARRY S. BOWMAN, Attorney General

TO: Mr. Charles G. Hedgcock, C/o Ward, Askren & Hedgcock, East Las Vegas, New Mexico.

Extension of Time for Payment of Taxes and Imposition Penalty and Interest.

OPINION

{*141} In reply to your letter of the 7th instant, stating that the County Treasurer of your county has been instructed by the Traveling Auditor to impose the statutory penalty for failure to pay taxes from December first of each year, regardless of the fact that the tax rolls were not ready and taxes could not possibly have been paid prior to said date, I wish to advise you as follows:

You state that the 1920 rolls were not ready until March 10th, and that by order of the County Commissioners, the time for payment was extended to April 10th.

I am of the opinion that the County Commissioners have no authority to extend the time for the imposition of the penalty prescribed by statute.

You state that the 1921 tax roll was not ready until January 1st and the time was extended until February 15th. The same rule would apply as in the former case.

In many counties district courts have entered orders extending the time within which payment of taxes can be made in order to avoid the penalty for delinquency. I am very doubtful whether courts have any authority or jurisdiction to enter such orders in the face of the mandatory provisions of the statute fixing the time of delinquency. No question has been raised, however, as to cases of this kind, and in every county in the state at one time or another, such orders have been entered and followed. I would not undertake to advise any county official to disobey or disregard such an order, for fear of having him adjudged in contempt of court.

If court orders can be obtained from Judge Leahy, I would advise {*142} that they be followed and that no penalties be imposed for the period prior to the date specified in the order for the becoming delinquent of the taxes.

In my opinion, the delinquency date of taxes for the year 1921 is not December first, but January first. See Section 415, Chapter 133, Laws 1921.