

Opinion No. 41-3805

June 2, 1941

BY: EDWARD P. CHASE, Attorney General

TO: Mr. Richard F. Rowley Assistant District Attorney Clovis, New Mexico

{*68} We have your letter of May 29 inquiring whether or not, in our opinion, the county treasurers have fully complied with the statute if they issued distraint warrants for delinquent taxes for the year 1940, or whether they are compelled, under the law, to make a complete delinquent tax list of all delinquent taxes.

Under the present set-up of the law, it is difficult to say whether, as a matter of law, the treasurer would be compelled to go back of 1940. One statute, Section 141-720, 1929 Code, which is still in effect, gives the tax commission jurisdiction to collect taxes after the second half has been delinquent more than six months. The earlier statute, Section 141-430, 1929 Code, referred to the previous year taxes, assuming no doubt, however, this would be done yearly, and the question of previous years might not have been taken into consideration. Taken at its face value, the list required is limited to the previous year. However, the section following this one was amended, as is now shown in Section 141-431, 1929 Code, and is general in its language. I personally believe that under it the treasurer would have the authority to go back of the previous year where there is delinquent property.

However, as you will see from the enclosed letter, the State Comptroller and this office concluded not to attempt to compel treasurers to issue warrants for years prior to 1940, in all cases, but to permit them to use their discretion in the matter. In fairness {*69} to the taxpayers who do pay their taxes, however, we thought it wise for all officers to cooperate and attempt to make collections wherever possible. It would not only be unwise but useless to attempt collection in cases where the personal property is gone. In such cases the only way collection can be made is by suit, and then only where the person has real estate upon which execution might issue.

Trusting the above will be of assistance to you, I remain

By A. M. FERNANDEZ,

Asst. Atty. General