

## Opinion No. 42-4063

April 6, 1942

**BY:** EDWARD P. CHASE, Attorney General

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

{\*177} In your letter of the 13th in speaking of soldiers exemptions you have propounded the following three questions and requested our opinion on the same. I quote from your letter:

"1. Where the treasurer's tax roll shows that the exemptions were allowed, does he have authority to accept money for taxes which are shown to be exempt?

"2. What steps, if any, should the treasurer take where a stranger to the record title has been allowed a soldier's exemption

a. For taxes which became delinquent ten years ago?

b. For taxes which became delinquent less than ten years ago?

"3. Is the treasurer justified in ignoring such a situation if it occurred before he went into office and whether or not such discrepancy if ignored would effect the merchantability of the title involved?"

In connection with your first question, I can see no reason why the treasurer shouldn't accept the payment of taxes at any time when said taxes are voluntarily tendered by a taxpayer. True, there is a penalty imposed by statute on any one who wrongfully claims a soldier's exemption (Section 14-1408, New Mexico Statutes Annotated, 1929 Compilation), but I find nothing in our statutes which would prohibit the treasurer from accepting taxes on property which had, in the first instance, either wrongfully or erroneously been shown as exempt. As a matter of practical application, however, it appears to me {\*178} that the tax payer would be in no better position if he paid more than the amount due according to the tax roll for the reason that the treasurer would not be authorized to change the roll or to show on the roll that more was paid than the amount set forth therein. It seems that the proper procedure would be for the tax payer to bring an action in the District Court to correct the tax roll eliminating any erroneous exemptions, and then pay the taxes on the amount shown on the corrected tax roll.

In connection with your second question, we are somewhat at a loss to definitely determine just what point you are driving at. It occurs to me, however, that the treasurer would do nothing in the two instances referred to by you in your second question. As to whether or not the exemption has been properly allowed is, in the first instant, a question for the tax assessor to determine. See Section 141-306, New Mexico Statutes Annotated, 1929 Compilation as amended by Chapter 135, Laws of 1939. It is to be

noted that these latter sections of the law specifically exempts the treasurer from any liability for any irregularity or illegality in any of the proceedings prior to his receiving the assessment rolls properly verified by the County Assessor and County Commissioners. In connection with this question your attention is also called to Section 1, Chapter 104, Laws of 1931. This latter section of the law prohibits the enforcement of a lien subsequent to ten years after the date of delinquency of the taxes, and further provides that if property is not assessed or is improperly assessed, the date of delinquency is presumed to be the same as if properly assessed in the first instance.

As to your third question, it occurs to me that the treasurer is fully within his rights to report any gross irregularity or illegality which may come to his attention to the District Attorney for whatever action the District Attorney may see fit to take. I do not believe that the County Treasurers' ignoring such a situation would in any way effect the merchantability of the title to the land involved for the reason that the treasurer is not only not charged with the duty of doing this, but to the contrary, he is specifically prohibited from in any manner changing the assessment rolls as delivered to him by the County Assessor.

By HOWARD F. HOUK,

Asst. Atty. General