

Opinion No. 42-4131

August 7, 1942

BY: EDWARD P. CHASE, Attorney General

TO: Mr. C. R. Sebastian State Comptroller Santa Fe, New Mexico

{*226} This is to acknowledge receipt of your letter of August 6, 1942, in which you raise a question as to the authority of the County Assessor or Treasurer to distrain personal property for the enforcement of collection of delinquent taxes thereon when a third party has a mortgage on that personal property.

Section 141-431, New Mexico Statutes Annotated, 1929 Compilation provides for distraint and sale of personal property for delinquent taxes and sets up the procedure to be followed:

Section 141-440, New Mexico Statutes Annotated, 1929 Compilation provides:

"All personal property shall be subject to distraint and sale for the taxes thereon against the rights of any mortgage, assignee or person other than a bona fide purchaser."

In view of the foregoing, it is my opinion that the right of a County Assessor or Treasurer to distrain and sell personal property for delinquent taxes thereon is superior to the rights of any mortgagee, assignee, or person other than a bona fide purchaser, regardless of the time when the mortgage or assignment was given or recorded.

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

By WILLIAM R. FEDERICI,

Asst. Atty. General