

Opinion No. 44-4484

March 20, 1944

BY: EDWARD P. CHASE, Attorney General

TO: Mr. David W. Carmody, District Attorney, Santa Fe, New Mexico

We are in receipt of your letter of March 3, 1944, in which you ask our opinion as to whether or not the San Juan County Treasurer may issue a tax sale certificate upon an assessment where the water tax has not been paid.

In your letter you do not specify what form of district these water taxes are levied for. In my answer I will assume that by the words "water tax" you refer to the assessment made by and on behalf of either a conservancy district or an irrigation district. With respect to conservancy districts your attention is directed to Section 77-2916, which provides as follows:

"The revenue laws of this state for the assessment, levying, and collection of taxes for state and county purposes, except as herein modified, shall be applicable for the purposes of the district in the collection of assessments including the enforcement of penalties and forfeiture for delinquent taxes. * * *"

In the case of *Tondre v. Garcia*, 45 N.M. 433 our Supreme Court had before it this section. There counsel for plaintiff contended that this section did not incorporate by reference the revenue laws of the State of New Mexico that provided for the sale of land for delinquent taxes and further, that if this section did attempt to incorporate the general revenue laws of the State it was unconstitutional as a violation of Article 4, Section 18 of our Constitution. In that case the Supreme Court overruled both of plaintiff's contentions.

In view of the foregoing it is my opinion that the County Treasurer may issue a tax sale certificate for failure to pay the conservancy district tax. By Section 77-2920 the board of any conservancy district may purchase property sold for delinquent taxes or district assessments.

Your attention is directed to Section 77-2126, wherein the identical provision is made with respect to irrigation districts as that cited above in connection with conservancy districts, and upon which the court relied in making its decision in the *Tondre* case.

Due to the foregoing it is my opinion that property within an irrigation district may be sold for delinquent irrigation district assessments, even though state and county taxes have been paid thereon.

It is noted that by Section 77-2520 it is provided that an irrigation district may purchase property sold for delinquent irrigation district assessments.

I also wish to call your attention to the holding in *Tondre v. Garcia*, wherein the court held that the state and county and conservancy district assessments were separate taxes, so that the Treasurer must accept the state and county taxes when tendered, even though the conservancy district tax is not paid.

Trusting that the above sufficiently answers your inquiry, I remain.

By ROBERT W. WARD,

Asst. Atty. General