

Opinion No. 49-5253

November 3, 1949

BY: JOE L. MARTINEZ, Attorney General

TO: R. F. Rowley District Attorney Ninth Judicial District Clovis, New Mexico

{*95} I have your letter of September 17, 1949, asking the opinion of this office as to the proper method of handling the assessment of real property which has in prior years been omitted from the tax rolls. This matter is covered by Section 76-240 of the 1941 Compilation, Pocket Supplement, which provides as follows:

"If the assessor shall, at any time before the delivery of the assessment roll to the county treasurer, discover that any personal property has been omitted in the assessment of any year, or number of years, and is, at the time of the discovery of such omission, owned or possessed by the same person as was the owner or in possession thereof at the time of such omission, it shall be his duty to list the same as hereinbefore provided in this article, in cases where the owner of property has failed to make return thereof, and he shall place the said property and his valuation thereof for every year, but not more than five (5) years, during which said property was omitted, upon the assessment roll for the year in which such property is discovered, before delivering the same to the treasurer; and in case such omission of property from the assessment roll is discovered by the treasurer after the assessment roll has been delivered to him it shall be his duty to put the same upon the assessment roll in his possession, entering it thereon under the head of additional assessments, and he shall extend the taxes thereon as the county assessor might have done if he had discovered such omission before delivering the assessment roll to the treasurer. And in case of the like omission of real estate from the assessment roll for one (1) or more years, like proceedings shall be had without regard to whether the property is still owned by the same person who was the owner at the {*96} time of such omission but no real estate shall be placed on the tax rolls for the purpose of taxation that has been omitted from the rolls when a period of ten (10) years shall have elapsed between the time the assessment should have been made and the attempt to make an omitted assessment. Any assessor or treasurer so placing property on the assessment roll shall immediately notify the state tax commission, which shall thereupon make a corresponding entry on the roll in its possession."

This particular section was before the Supreme Court of this State in *State v. Magdalena Development Co.*, 31 N.M. 114, 242 P. 329. The Court stated:

"* * * We find that the assessment of omitted property, by whomever made, is to be "upon the assessment roll for the year in which such property is discovered." This can only mean the roll for the year in which discovery of the omission is made. So property discovered during 1921 to have been omitted in 1920, or in any other former year, is to be assessed on the 1921 roll."

In the particular case, the treasurer had made the assessment on the correct tax roll but had done so before the roll was delivered to him and while it was still in the hands of the county assessor. The Court declared the assessment void and stated:

"It is likewise plain that concurrent jurisdiction is not given to the assessor and the treasurer. The delivery of the roll marks the end of the jurisdiction of the one and beginning of the jurisdiction of the other."

It is, therefore, the opinion of this office that omitted property must be listed on the taxrolls for the year in which the omission was discovered from January 1st of that year. Until such time as the tax roll is turned over to the treasurer the assessment must be made by the assessor and an assessment made by any other person is absolutely void. From the date that the treasurer received the tax roll until December 31st of that year, the assessment must be made by the county treasurer and an assessment made by any other person is likewise absolutely void.