

Opinion No. 53-5640

January 19, 1953

BY: RICHARD H. ROBINSON, Attorney General

TO: Honorable Thomas P. Foy District Attorney Sixth Judicial District Silver City, New Mexico

{*25} This is in answer to your request for an opinion upon what your County Treasurer should do with county warrants that are being held without the stamp "No Taxes Delinquent."

Section 76-408 N.M.S.A., 1941 Comp., as amended, places the duty upon county treasurers to deduct from warrants presented to them for payment of taxes that are due, owing and delinquent. The preceding section, 76-407 N.M.S.A., 1941 Comp., provides that the clerk or other proper officer shall stamp that the warrant is subject to taxes, penalties and costs and include the term "Assignee". Under our negotiable instruments law this gives due notice to any holder of any such instrument that it is subject to conditional payment.

In accordance with these two statutes and from Attorney General Opinions numbered 549 and 336, it is the opinion of this office that presentation for payment is prerequisite to the duty of deducting the sums due. Presentation for payment would infer negotiation by the payee of the warrant.

As a practical matter and after having discussed this matter with the Comptroller it is the opinion of this office that the County Treasurer, in cases where taxes are delinquent, may return warrants so indicating to the departments from which they were requested, with the recommendation that such departments notify the payees that they are holding the warrant for the reason that the records of the County Treasurer indicate taxes are delinquent and that to facilitate delivery and payment of the warrant the payee must either satisfy the taxes directly or may order the warrant applied to the delinquent taxes.

In cases where the payees of warrants whose taxes appear to be delinquent do not respond to such notices and make no effort to either satisfy the taxes or to apply the warrant upon the taxes due, it is recommended that such warrants be returned to the board or commission that has ordered their issuance for their official action.

It is the opinion of this office that the County Treasurer, without additional authority, cannot per se apply these sums upon taxes due.

By: William J. Torrington

Asst. Attorney General