

## **Opinion No. 66-84**

June 29, 1966

**BY:** OPINION OF BOSTON E. WITT, Attorney General Tom Overstreet, Assistant Attorney General

**TO:** Jesse D. Kornegay, Chief Tax Commissioner, State Tax Commission, Santa Fe, New Mexico

### **QUESTION**

#### **QUESTIONS**

1. Can the State Tax Commission require a ten-year tax statement from the county treasurer?
2. Can the State Tax Commission accept a ten-year tax statement issued by someone other than a county treasurer?
3. Can a private individual require a ten-year tax statement from the county treasurer?
4. If a tax statement is issued by a county treasurer to a private individual, may the county treasurer charge a fee for rendering such a service?

#### **CONCLUSIONS**

1. Yes.
2. No.
3. No.
4. No.

### **OPINION**

#### **{\*111} ANALYSIS**

Attorney General's Opinion No. 61-99-55-157 specifically answers the first question. In that opinion, it was held that the State Tax Commission under its broad powers contained in Section 72-6-12(4), N.M.S.A., 1953 Compilation, had the authority and power to require the county treasurer to issue a ten-year tax statement. Since the issuance of that opinion, Section 72-8-32, N.M.S.A., 1953 Compilation was amended to include the following language:

The county treasurer **shall** furnish the state tax commission upon written request a ten-year tax statement showing all taxes due and unpaid for the preceding ten [10] years. (Emphasis supplied.)

Thus, it is clear that the State Tax Commission can require by written request a ten-year statement from the county treasurer, and that the county treasurer must furnish the statement.

Your second question asks whether the State Tax Commission can accept a similar statement from someone other than the county treasurer. A similar problem was decided in the case of **Francher, et al v. Board of Commissioners of Grant County**, 28 N.M. 179, 210 P. 237 (1922). In that case, Grant County employed a private firm to do certain work which by statute was to be done by the county clerk. It was held that the Board of Commissioners of Grant County was not authorized to employ a private individual to do the work of the county clerk. There was quoted in that case at page 186 the following taken from the case of **News Dispatch Co. v. Board of Commissioners**, 61 Okl. 259, 161 Pac. 207:

"It is a familiar rule of construction, as laid down in the syllabus of *United States v. Weld, McCahon*, 185 (Kan. Dasser's Ed.) 591 (Fed. Cas. No. 16,660) that "When one person, or class of persons, is named in a power of attorney, or an act of the lawmaking power, as being authorized to do a certain thing therein named, all other persons are thereby excluded from doing the same thing as effectually as if they were positively forbidden." *State ex rel. Haskell, Governor, v. Houston et al.*, 21 Okl. 782, 97 Pac. 982; *Osage & Oklahoma Co. v. Millard* (not yet officially reported) 145 Pac. 798.

"In the case of *State v. Goldthait*, 172 Ind., 210, 87 N. E. 133, 19 Ann. Cas. 737, the Supreme Court of Indiana said: 'A contract with a county for the performance by a third person of duties which are imposed by law on a public officer is void as against public policy.'"

In view of the statutory duty placed on the county treasurers in issuing a tax statement to the State Tax Commission, it is our opinion that no one else can be employed to obtain these statements. If for any reason the county treasurer would refuse to furnish the State Tax Commission the ten-year tax statement upon written request, the State Tax Commission could compel the issuance of this statement by writ of mandamus. See **Reese v. Dempsey**, 48 N.M. 417, 152 P.2d 157 (1944).

In answer to your third question, we find no statutory duty imposed on the county treasurer to issue a tax statement to a private individual. Therefore, we conclude that a private individual cannot require a tax statement from the county treasurer.

Section 71-5-1, N.M.S.A., 1953 Compilation affords members of the public a right to inspect public records. {<sup>\*</sup>112} If a private individual desires a tax statement he can obtain one by inspecting the tax records himself or hire a person to furnish such a tax statement.

Section 15-43-15, N.M.S.A., 1953 Compilation provides that no county officer may charge or accept compensation for any services rendered except those services that the officer is authorized to perform. Since we have concluded the rendering of a tax statement to a private individual is not authorized, we are of the opinion that it is not proper for a county treasurer to charge a fee for issuing such a statement.