

Opinion No. 70-06

January 23, 1970

BY: OPINION OF JAMES A. MALONEY, Attorney General

TO: Honorable Carter W. Kirk New Mexico State Representative Legislative-Executive Building Santa Fe, New Mexico 87501

QUESTION

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When the County Assessor has sufficient evidence of a conveyance of real property, complete with the name and address of the grantee, should he assess the property in the name of the grantee even though the deed has not been recorded and the grantee has not declared the property to the assessor?

CONCLUSION

See analysis.

OPINION

{*10} ANALYSIS

Section 72-2-3, N.M.S.A., 1953 Compilation, requires everyone to "make a declaration of all property subject to taxation of which he is the owner." However, it is a well-established fact that this required declaration is not always made. Therefore, to insure that all property within the county is assessed, county assessors frequently rely upon the deed record books in the county clerk's office. If there has been a transfer of the property during the year and the grantee fails to record his deed the assessment is continued in the name of the grantor even though he no longer has any interest in the land and did not claim ownership in his own declaration.

Section 72-8-14, N.M.S.A., 1953 Compilation, places a duty upon the county assessor to ascertain the ownership of all real estate within the county. It provides in part:

It shall be the duty of all assessing authorities to ascertain, from the record of the county clerk, or from any other source available, the names of the owners of all real estate located within their respective counties and to place and carry all real estate in the name of the owner as ascertained.

The above-quoted section makes it clear that the records of the county clerk are not the only source to be employed by the county assessor in attempting to assess all realty in the name of the owner. However, in **Foster v. Bennett**, 44 N.M. 618, 107 P.2d 321

(1940), the New Mexico Supreme Court said that this statutory duty of ascertaining the names of the owners of real estate is only directory. Thus, although it is our opinion that the county assessor should assess property in the name of the grantee when presented with sufficient evidence of a conveyance and the name of the grantee, it is up to the individual assessors to determine what is sufficient evidence.

By: Ray Shollenbarger

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