

Opinion No. 12-917

June 29, 1912

BY: FRANK W. CLANCY, Attorney General

TO: Mr. George A. Byus, Alamogordo, N. M.

PUBLICATION OF DELINQUENT LISTS.

Defining when and how publication of delinquent tax lists shall be made.

OPINION

{*54} Your letter of the 26th instant was received day before yesterday but I have not been able sooner to answer.

As to the requirement of the statute that the publication of the delinquent tax lists must begin on the second day of January, it appears to me that that requirement can be met even though the second day of next January may not be your regular publication day. You might for one week vary that publication without necessarily interfering, as you fear, with the publication of any other legal notices. Nearly all, and perhaps all, notices that are to be published more than once, are by the statutes to be published for a certain number of consecutive weeks, or at least once a week for so many weeks, but this does not necessarily mean that each publication must be on the same day of each consecutive week. For instance, if one publication were made on any day during the week ending December 28, 1912, and then on January 2, 1913, in the following week, which happens to be Thursday, the requirement would be met, even though the preceding publication might have been on Wednesday or Friday. There might be a possibility under some circumstances of making one extra publication in order to meet the law as to publication for a fixed number of weeks.

You ask whether under this new law bids would be permissible for doing the work of publishing the delinquent tax list, in view of the fact that the act requires that the publication be made in the official newspaper. Where there is an official county paper the publication certainly must be made in that paper, but I do not think that the county would be entirely helpless as to the amount to be paid for the publication because the commissioners had designated an official paper if the maximum rate allowable under the statute should appear to be excessive on account of any local conditions. The county commissioners would certainly have some discretion as to the amount to be paid, and in case of disagreement they would have power to change the official paper. I can imagine that in some counties the conditions are such that the maximum rate fixed by the statute would not be an unfair compensation to a struggling newspaper, while in some other counties where newspapers are prosperous and competitive that rate would be excessive. Answering directly your question it appears to me that such publication which must be made in the official paper is not a subject of competitive bids, and there

is no room for the application of the provisions of Section 698 of the Compiled Laws of 1897, which you appear to have in mind, that section requiring county commissioners to advertise for bids for any expenditure for public work exceeding the amount of \$ 300.

{*55} You also ask whether Section 11 of the new publication law which repeals other acts has the effect of not making it mandatory on county commissioners to publish annual financial statements. I do not discover that that section refers in any way to that subject. The annual statement referred to, I assume, is the one required by Section 675 of the Compiled Laws of 1897, and I believe that that section remains unaffected by any subsequent legislation.