

Opinion No. 13-1001

March 21, 1913

BY: FRANK W. CLANCY, Attorney General

TO: Mr. J. G. Osburn, Artesia, N. M.

TOWN WARRANTS.

How outstanding town warrants are to be taken up.

OPINION

{*166} Your letter of the 15th inst. was duly received, but I have had no time sooner to answer and I trust that the delay has caused you no inconvenience.

You say that the town of Artesia has on hand unappropriated funds and a considerable number of overdue and unpaid warrants outstanding; that the fund is not sufficient to pay all of the warrants and the question you submit is as to whether the warrants should be paid in their order, that is the oldest ones first, or whether the money should be prorated on all of the outstanding warrants.

I would like a little more information about the outstanding warrants before I can be certain as to what should be done with the money which you have on hand. It seems necessary to know when those warrants were issued and for what purposes, as it might make a great deal of difference in view of the provisions of Sections 299 to 302 of the Compiled Laws of 1897. I incline to the opinion that, under Section 299, there ought not to be any warrants at all outstanding. That section forbids the town trustees contracting any debt, during any current year, which cannot be paid out of the money actually collected and belonging to that current year, but if any such indebtedness is contracted and cannot be paid it is declared to be null and void, and no officer can, without being guilty of a misdemeanor, issue any certificate or other form of approval of indebtedness separate from the account filed in the first place, nor can the fund belonging to any current year be used for any other purpose than paying the current expenses of that year. The void indebtedness, however, by Section 302, remains valid to the extent of receiving any money afterwards collected and belonging to the current year when the debt was contracted and the money of such year, when collected, {*167} shall be distributed pro rata among the creditors. If the debt of any current year is paid in full and there is money for that year remaining, that remainder goes into the fund for the next succeeding current year.

Now, if your outstanding warrants are for previous current years, these provisions of the statute will point out how the money on hand can be used. If the money is the result of collections of delinquent taxes for past years, the money so collected must be used to

pay up the debts of the year to which the taxes belong, and if that year is paid up in full then the money goes to the next current year.

If, however, your outstanding warrants are for the present current year, then, under Section 301, your money must be pro rated among the different creditors.