

## Opinion No. 12-969

December 19, 1912

**BY:** HARRY S. CLANCY, Assistant Attorney General

**TO:** Honorable Howell Earnest, Traveling Auditor and Bank Examiner, Santa Fe, New Mexico.

### **DELINQUENT TAXES.**

County commissioners have no power to employ special counsel in the prosecution of tax suits.

### **OPINION**

{\*125} I am in receipt of your letter of even date, in which you state that you have been informed that the County Commissioners of Union County have taken up the matter of collection of delinquent taxes with the District Attorney and that he has advised them that he did not have time to attend to the matter, and that the Commissioners should contract with some one to do this work.

By Sections 2579 and 2581, Compiled Laws of 1897, it was provided that it should not be lawful for any county to employ any attorney other than the one provided by law, unless the District Attorney should be sick, absent after being notified, or by reason of interest disqualified from representing the county interest, and that in case of such sickness or absence the District Attorney might designate any other person learned in the law to represent him at meetings of the board, or in the case of his absence from any trial in which the territory or county was interested the judge of the court might appoint some other competent person to represent him, but in either case such person designated by the District Attorney or appointed by the judge was compelled to look for his pay to the District Attorney and not the county. Both of these sections, however, were repealed by Section 16, Chapter 22, Laws of 1909, and by Section 15 of that act, it is provided that no one shall represent a county except the District Attorney, his legally appointed and qualified assistants, or {\*126} the Attorney General, and in case of the absence of a District Attorney the court shall appoint a competent person to represent the county or territory, who shall receive the fees provided for in that act. In view of the fact that fees of district attorneys have been abolished, it is extremely doubtful if a court could induce anyone to represent the county merely for glory and without any pecuniary consideration.

Section 649, C. L. 1897, provided that a county could employ special attorneys for the prosecution of suits for the collection of taxes at a compensation named in said section. However, that section has been repealed by Section 14, Chapter 22, Laws of 1899. This latter section is probably the one which has misled the District Attorney and the County

Commissioners, the presumption being that they were unaware of the fact that it had been repealed.

A careful examination of all the law upon this subject seems to clearly show that County Commissioners have no power to employ special counsel in the prosecution of tax suits, and by Section 17, Chapter 22, Laws of 1899, it is undoubtedly made the duty of the District Attorney to prosecute such suits.