

Opinion No. 13-1088

August 2, 1913

BY: FRANK W. CLANCY, Attorney General

TO: Hon. H. B. Hamilton, Carrizozo, N. M.

TAXATION.

Omnibus tax suits can no longer be brought.

OPINION

{*258} Upon my return this morning from Raton I find your letter of the 29th ultimo relative to tax matter in Dona Ana County. You say that after the new tax law, which is published as Chapter 84 of the Laws {*259} of 1913, was passed you filed complaints upon publications of delinquent tax lists which had been completed in a newspaper prior to the passage of the new law, and that you have a similar case in Otero County, but that no judgments have yet been entered in these cases. I have had this matter called to my attention before, and I am of opinion that the unqualified repeal of the act of 1899 by which the omnibus tax suits were authorized, without any saving clause as to pending cases, takes away the jurisdiction of the court and paralyzes the prosecution of any such cases, just as the repeal of a statute declaring an act to be a crime, without any saving clause, puts an end to all pending prosecutions under the statute.

You further state that it is urged there is nothing in the new law which would make it retroactive, and that therefore there can be no proceeding under it with regard to taxes delinquent before its passage. I think this is erroneous. Under Section 34 of the act the collector appears to be authorized, within forty-five days after the first day of June in each year, to prepare and cause to be published a notice that he will "offer for sale, separately and in consecutive order, each parcel of property upon which taxes are delinquent, as shown by the tax rolls," and I see nothing to limit this to the tax roll of the preceding year, but on the contrary it can be considered applicable to delinquent taxes shown by any antecedent tax rolls, and the use of the word in the plural strengthens this view.

You also speak of the contention that personal, individual suits cannot now be brought for the recovery of taxes, and that any such suits now pending must be dismissed. This contention must be based upon the idea that the only authority for bringing individual suits is in Section 17 of the act of 1899, which is specifically repealed by the act of 1913, but an examination of the statutes will not bear this out. In that Section 17 there is a proviso "That no separate suit under the provisions of this act shall be brought against individuals or their property," without special authority from the judge of the District Court. It may be that as to separate suits brought under the provisions of that act of 1899 and still pending, dismissals will be necessary, but it is not true that there is no

general authority for the bringing of such separate suits, as you will see by reference to Section 4157 of the Compiled Laws of 1897, which has never been repealed. In the act of 1899, in Section 14, there is a specific repeal of a large number of sections of the Compiled Laws, but Section 4157 is not among them, and the legislature evidently intended to leave that section in force so that the district attorney would be at liberty to bring suits for the recovery of taxes where the amount exceeds \$ 100. Separate suits for smaller amounts cannot be of great importance.