

Opinion No. 13-1133

November 8, 1913

BY: H. S. CLANCY, Assistant Attorney General

TO: Mr. Walter L. Kegel, Chief Clerk Traveling Auditor's Office, Roswell, N. M.

TAXATION.

In regard to delinquent taxes, and compensation of county treasurer.

OPINION

{*314} I have your letter of the 5th inst., in which you propound the following questions, and ask for the opinion of this office thereon:

(1)

To what fund should be credited the interest collected by the county treasurer on tax sale certificates which are redeemed? Both under the old law, if it was different and the present.

Where interest is collected by the county treasurer on tax sale certificates which belonged to the county, but have been redeemed, the amount so collected will necessarily be disposed of in the same manner that the original delinquent tax is, going into the same fund, or treated as any other delinquent tax when collected, is treated.

(2)

Should the "court costs" collected on judgments for delinquent taxes, secured by former District Attorneys, and now collected, be paid to the former District Attorneys?

Replying to the last question I have said that a former District Attorney is entitled to receive five per cent of the amounts collected on judgments for delinquent taxes.

(3)

A tax sale certificate is sold to the county, which then holds it for six or seven months, then sells it for the amount of the certificate plus interest to an individual. Can this last purchaser collect interest on the amount he pays or only on the amount of the certificate? In other words, can he collect from the redeemer interest on the interest he pays the county?

In case a tax certificate is redeemed by the owner of the property within the time provided by law, he must pay, under the provisions of {*315} Sec. 38, Ch. 84, Laws of

1913, to the county collector, for the use of the purchaser, the amount paid by him to the county, which would include all interest due at the date of the sale together with interest from the date of such sale until the date of the redemption at the rate of one per cent per month, as interest. This in fact makes the person who redeems the property pay interest upon the interest which has been paid to the county by the purchaser of the tax certificate.

(4)

When former Treasurer Sutherland retired from office January 15th, 1912, he collected four per cent in full on all collections made by him up to that date. He had already been paid \$ 4,500.00 for the collections the year previous. Was he not entitled only to 15 days pay at the rate of \$ 4,500.00 per year?

New Mexico became a state on January 6, 1912, and under the constitution the fee system, so far as a county treasurer is concerned, ceased. It follows then that a county treasurer was entitled to receive four per cent on all collections made by him up to, and including January 6. In the present case, if the successor of Mr. Sutherland did not qualify until January 15, 1912, it would appear that Mr. Sutherland would be entitled to some compensation for services rendered between January 6 and 15. But during that period, he could not retain or receive as compensation four per cent upon moneys collected by him. His compensation could not be based upon \$ 4,500.00 a year, but he will probably be compelled to look to the legislature for relief, such relief probably being based upon the salary which is to be fixed by that body for the treasurer of Chaves County. In any event it would seem plain that he was not entitled to receive four per cent upon collections made by him between January 6 and 15, 1912.

I trust that it has been made plain to you, the opinion of this office in regard to the matters inquired about.