

Opinion No. 13-978

January 20, 1913

BY: FRANK W. CLANCY, Attorney General

TO: Honorable Howell Earnest, Traveling Auditor, Santa Fe, N. M.

BOND OF TREASURER.

County Treasurer to give one bond covering his term of office.

OPINION

{*141} I have your letter transmitting another from Eugenio Romero, Treasurer of San Miguel County, on the subject of requiring county treasurer to furnish additional bond in case the fifty per cent of collections for the year ending November 30, 1912, exceeds the fifty per cent of the collections for the year ending November 30, 1911.

I had assumed that the state intended, annually to regulate the amount of bond given with the collection of the next preceding year as the basis, but I feel compelled to change my opinion, although I believe that the statute is not entirely clear. It may be desirable to review the earlier legislation in the hope of ascertaining the legislative intent.

It is unnecessary to go further back than the statute of 1876, which appears as Section 382 and 394 of the Compiled Laws of 1884, the particular sections for our present consideration being 382 and 383. At that time the sheriff was ex-officio collector of taxes and by the first section of the act, which is said Section 382, every person elected to the office of sheriff was required to execute and file a bond in a sum to be determined by the Judge of the District Court, before he should be "authorized to perform any official duty," conditioned upon the faithful performance of his duties as sheriff during the term for which he was elected. By the next section it was required that he should "also execute and file a bond in duplicate to the territory as ex-officio collector. in his county in a sum to be determined in like manner," which sum should "in no case be less than double the amount of money to be collected by such collector," and the conditions showing that the bond was for the performance of his duties during his term of office.

It seems reasonably clear that these bonds were to be given when the sheriff entered upon the duties of his office and were to cover his whole term of office.

The law remained unchanged until 1895, when it was changed by Chapter 26 of the laws of that year which appears in the Compiled Laws of 1897 beginning with Section 721. The only difference as to the bond of the collector was that it should be not less than one hundred per cent of the amount of the money to be collected by him in any one year. In 1897, as will be seen by reference to page 304 of the Compiled Laws of

1897, the law was changed so as to make the county treasurers ex-officio collectors, and it was provided that they should "give bond as such treasurers and ex-officio county collectors in a sum of not less than the amount of taxes collected during the previous year in their respective counties." Taking this in connection with the previous statute, which required only one bond to be given before the sheriff and ex-officio collector should enter upon the duties of his office, it would seem that the new officer was required to give only one bond the same as the former collector.

The next change in the statute on this subject is to be found in Section 2 of Chapter 106 of the Laws of 1905, which chapter was repealed in 1909. That Section 2 declared that "Hereafter the amount to be fixed on all bonds for municipal or county treasurers shall be based upon the collections made by such treasurer during any preceding year, and the amount of such bond shall be twenty-five per centum of the aggregate collections made during such preceding year." There is still nothing to be found to indicate that more than one bond should be given by the treasurer, which bond would cover the whole of his term of office.

When Chapter 106 of the Laws of 1905 was repealed by Chapter 122 of the Laws of 1909, the later law does use language which, considered by itself, might indicate the necessity for increasing the treasurer's bond each year, if the collections had increased during the last preceding year, if that statute is considered without reference to the earlier legislation, but taking the whole course of legislation together I believe the proper construction is that the treasurer is required to give only one bond and that is to be given when he begins his term of office and should be based upon the collections made during the last preceding year. It is true that the statute says that it "shall be based upon the collections made by such treasurer during the last preceding year," which would lead us to the belief that it referred by the words "such treasurer" to the individual holding the office and requires an annual adjustment of his bond, but this is too literal a construction and I am forced to the conclusion that but one bond is required of the treasurer.

If, at any time during the term of office of a treasurer, the bond should become actually insufficient on account of great increase in the amount of taxes collected, I believe a remedy can be found in Sections 687 and 691 of the Compiled Laws of 1897, which make it the duty of the Board of County Commissioners to examine and inquire into the sufficiency of the official bonds of the collector and treasurer and, upon ascertaining that the bond of the ex-officio collector is insufficient, they are to certify the fact to the District Court of their county and, undoubtedly, the District Court would apply the proper remedy. If you, in the discharge of your duty as to the examination of county offices, should ascertain any such actual insufficiency you could, with propriety, call the attention of the County Commissioners and of the District Attorney to the fact for the purpose of obtaining some additional bond.

I return Mr. Romero's letter herewith.