

**Opinion No. 14-1186**

April 11, 1914

**BY:** FRANK W. CLANCY, Attorney General

**TO:** Mr. J. M. Laforett, Cerro, New Mexico.

**TAXES.**

Notice must be given before road tax can be collected by suit.

**OPINION**

{\*43} I have received your letter of the 6th inst., in which you ask me if there is any law under which the road tax for past years can be collected.

I think the answer to this question would depend upon the fact as to whether or not the person or persons liable for the tax were properly notified during the past years to perform work or pay money in lieu thereof. The county road board is now vested with the powers formerly possessed by the road supervisors, and Sec. 27 of Chap. 124 of the laws of 1905, made it the duty of the road supervisor to notify persons in his district subject to road tax between the first day of April and the first day of September in each year to appear at a time and place to be fixed, and with tools which he should designate, to perform the work required in lieu of road tax, the amount of the road tax being fixed by the preceding section at \$ 3.00. Sec. 28 of the same act provides that any person, after having been notified, who refuses to pay or to perform the work in lieu thereof shall be considered delinquent and can be sued for his tax.

It appears to me that it is essential to the validity of any claim to collect the tax that the notice must first be given, as required by the statute, during the year for which it is sought to collect the tax, or there will be no proper foundation for the collection. The law requires that notice shall be given so that the person subject to the tax can have his choice to pay in money or to work for three days, and if no notice is served upon him so that he can exercise his choice I am unable to see that he can be compelled to pay.

If, however, the notice was properly given and the person notified failed to work or to pay his \$ 3.00, the lapse of time will not prevent the collection of the \$ 3.00 and he may be compelled to pay his \$ 3.00 for each year when he was notified and failed to comply with the notice.