

## Opinion No. 14-1401

December 24, 1914

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

**TO:** Mr. A. W. Hockenull, Clovis, New Mexico.

### TAXATION.

County treasurer required to deduct from warrant the amount of taxes due by the payee or assignee thereof, whether delinquent or not.

### OPINION

{\*262} I have just received your letter of the 21st inst. in which you ask, in substance, whether under Chapter 101 of the Laws of 1901, the county treasurer is required to deduct from the amount called for by warrants presented to him all taxes levied upon the property of the payee or assignee of the warrant, or only those which have become delinquent. You say that the deduction of the whole year's taxes would work a hardship upon those county officers who are being paid only sufficient sums to enable them to run their offices, no salaries having been provided by the legislature.

The statute requires the treasurer to deduct from any bill, warrant, order or certificate presented to him for payment, the amount of taxes due by the payee or any assignee thereof, as shown by the tax rolls of the county. Taxes certainly become due as soon as there is anybody with authority to collect or receive them. Certainly the moment that the collector receives the tax rolls with the proper order thereon, he is authorized to receive all taxes shown by those tax rolls. All such taxes are then due and may be paid. They become delinquent on the dates fixed by law on account of the failure of the tax-payer to pay what was previously due. There is no way by which we can say that they were not previously due, and there is no way that we could call them delinquent except on the theory that they were previously due.

You say that Chapter 84 of the Laws of 1913 does not seem to make it clear just when taxes become due, but Section 30, to which you refer, makes it the duty of the tax-payer to make payment of his taxes before the same become delinquent, and this harmonizes [Illegible Words] is above written -- that the taxes are due before they become delinquent.

There may be, possibly, some doubt as to whether said Chapter 101 applies to payments made to county officers under existing circumstances for the purpose of enabling them to run their offices. You will notice that that act is limited to "bills" which are allowed and ordered paid by the county commissioners. If the county commissioners make an order that there shall be paid to the county clerk to enable him to run his office, the sum of \$ 500, it is clear that this falls within the statutory language

with regard to the allowance of {^263} bills. I am inclined to believe that it would not, and I suggest this for your careful consideration.