

Opinion No. 15-1429

January 30, 1915

BY: FRANK W. CLANCY, Attorney General

TO: Mr. Owen H. O'Neil, Box 91, Corona, N. M.

As to exemption of \$ 200.00 as head of a family.

OPINION

{*18} I have just received your letter of the 28th inst. in which you say that in 1912 you paid the amount of taxes demanded by the collector of Lincoln County, and then learned that your exemption of \$ 200, as head of a family, had not been allowed. I cannot tell from {*19} your letter whether or not the failure to allow you the exemption was correct. In order to obtain the exemption it is necessary that a tax-payer should make an affidavit as to the true market value of his property, and that he is the head of a family residing in this state. This is prescribed by Section 1757 of the Compiled Laws of 1897. Since the passage of Chapter 84 of the Laws of 1913, which was approved March 18, 1913, the requirement is slightly different in language, but the oath must be made. Section 5 of that act is required to make oath that he is a head of a family and has not claimed and will not claim such exemption in any other county for the current year. If you made the oath required by the statute, you were entitled to the exemption, and I believe that upon a representation of the fact to the District Attorney, he would obtain from the district court an order rectifying the mistake without further expense to you. If you did not make the affidavit required by the statute, you are not entitled to any exemption.

You further say that the last of May, 1914, you received a notice from the assessor that the valuation of your improvements was raised from \$ 100 to \$ 300. You say this was too late for you to appear before the Board of County Commissioners, whose meeting was on the first Monday of June. You complain of the failure of your commissioner, Mr. Frank, to adjust the matter in accordance with your desires, but there was no way that he could change the assessment except at the June meeting of the board sitting as a Board of Equalization, and then only with the concurrence of one other member at least. Individually, there was nothing within his power that he could do.

As to this, you ask me to advise you what right the assessor had to raise your assessment; what right the county commissioner has to refuse to handle your case; what right the collector had to make a false statement to you concerning the amount of taxes due and how to proceed to obtain a refund of the money unjustly collected from you and to have the unjust assessment removed

The assessor could not have raised your assessment. The law makes it his duty to put a value on the property and we must assume that he attempted to discharge his duty to

the best of his ability. If you will examine Section 2 of Chapter 84 of the Laws of 1913, you will see that the taxpayer is not to fix the value of his property, but it is the duty of the county assessor to do so.

From what is above written, you will see why the county commissioner must refuse to handle your case. The only time when he could do anything about it was at the June meeting of the county Board of Equalization.

As to the collector making a false statement to you concerning the amount of taxes due, we must give him the benefit of all possible doubts and believe that if he sent you an incorrect statement, it was inadvertence and mistake.

The method to be pursued to obtain a refund of any money wrongfully collected is prescribed in Section 26 of Chapter 84 of the Laws of 1913. You can call it to the attention of the district attorney, whose duty it then will be to submit the matter to the district court, and upon the order of that court any erroneous payment {**20*} is to be refunded without cost or expense to the taxpayer, or you may present your claim to the district court by petition, in which case it is the duty of the district attorney to appear in response to such petition without the issuance or service of any process.