

## Opinion No. 15-1478

March 24, 1915

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

**TO:** Mr. S. E. Ferree, Artesia, New Mexico.

**District attorneys may collect delinquent taxes by personal suit.**

### OPINION

{\*61} Your letter of the 16th instant was received some days ago, but I have been so closely occupied with various pressing matters that I have had no time sooner to answer.

In substance you ask my opinion on the authority of district attorneys to collect delinquent taxes by personal suit, as to which you say you fail to find any authority for such action under our statute or under the common law. There are several statutes which I think recognize the authority of district attorneys to institute such suits, but I think that the general authority given such officers would be quite sufficient to justify any such action when the public interest, in his judgment, required it. It is made the duty of the district attorney:

"To prosecute and defend for the territory in all courts of record of the counties of his district, all cases, criminal and civil, in which the territory or any county in his district may be a party, or may be interested or concerned,"

as you will see by reference to Section 2 of Chapter 22 of the Laws of 1909. In Section 12 of the same act he is declared to be entitled to "An appearance fee of \$ 5.00 in each action, including suits for recovery of delinquent taxes." By paragraph numbered four, of the same section, the district attorney is given a percentage upon the amount collected in cases where a suit is brought in behalf of any county or the territory to recover moneys, and in Section 13 it is provided that in civil suits for the recovery of delinquent taxes this {\*62} compensation shall be paid out of the amount recovered upon order of the board of county commissioners.

In Section 2588 of the Compiled Laws of 1897 there is a limitation upon the power of district attorneys to prosecute any suit for taxes by forbidding his doing so in any case where the amount of tax is less than \$ 100.00, which seems to carry with it a recognition of his general authority to bring such suits, and in a proviso in Section 17 of Chapter 22 of the Laws of 1899 there is a like recognition of his authority to bring a separate suit, but imposing a condition that the judge of the district court must authorize such suit by an order in writing.

In view of these various provisions I am of opinion that a district attorney may bring such suits. The fact that the provisions as to his compensation, contained in the act of 1909, have been superseded by the district attorney's act of 1913 or that Section 2588 was repealed by the act of 1899, which, in turn, was repealed by Chapter 84 of the Laws of 1913, does not, to my mind, affect the question of the general authority of a district attorney as recognized in these statutes, to which resort can be had for light as to that general power, even though they have been repealed.