

Opinion No. 15-1544

June 5, 1915

BY: FRANK W. CLANCY, Attorney General

TO: Mr. K. K. Scott, District Attorney, Roswell, N. M.

As to sale of real estate to enforce payment of taxes upon personal property.

OPINION

{*125} I have not sooner answered your letter of May 29th because I have taken a little time to see whether I could find anything in the statutes by which the sale of real estate is authorized in order to enforce payment of taxes upon personal property, but I find myself reduced to the same condition of mind that you have.

Under the statute as it now exists as shown by Section 33 of Chapter 84 of the Laws of 1913, personal property may be seized and sold by the collector, not only for the taxes on the personal property, but for the taxes upon his real estate also, but I find nothing to indicate that at the present time, under a delinquent tax {*126} sale, real estate may be sold for personal property taxes. I must conclude that the theory of the legislature was that so far as personal property taxes is concerned the remedy given in Sections 32 and 33 of said Chapter 84 was sufficient, but as a matter of fact, this is not so as personal property has a quality of movability that makes those provisions with regard to distraint and sale not always effectual. I believe, however, that in any case where the personal property tax is sufficiently large to justify such a proceeding, and the collector has not been able to collect it by distraint and sale, a personal action might be brought against the delinquent taxpayer and upon a judgment, real estate could be subjected to the payment of the personal property tax as well as to the taxes upon the real estate itself.

I will enclose herewith for your information, copy of Senate Substitute for House Bill No. 77 (Sec. 5495, Codification of 1915.) I have tried to find in this new law something which would enable us to say that the sale of property might be for taxes upon personal property as well as real estate, but taking the whole of it together, I have not been able to reach that conclusion.