

Opinion No. 15-1620

August 17, 1915

BY: H. S. BOWMAN, Assistant Attorney General

TO: Mr. C. J. Amble, Treasurer of Torrance County, and Mr. Antonio Salazar, Assessor of Torrance County, Estancia, New Mexico.

As to taxes on improvements upon the public domain.

OPINION

{*192} Owing to press of official duties and the fact that some of the members of the office force have been busily engaged in court in the trial of cases for several days, we have not been able sooner to reply to your letters of the 6th instant in regard to levy of taxes upon improvements upon the public domain, and the tax lien that attaches as a result of such a levy.

Both of you gentlemen call attention to what appears to be conflicting opinions from this office in regard to this subject, but a careful examination of the two opinions mentioned, and of the laws in effect at the time of the writing thereof, will demonstrate that there is no difference as to the holdings therein.

{*193} The letter directed to Mr. Amble, under date of October 6, 1914 called attention to Section 4019 of the Compiled Laws of 1897, which provides that improvements are real property, and as such are subject to the collection of delinquent taxes the same as other real property.

In my letter to Mr. Faeilinger, under date of July 31, 1915, it was stated that there was considerable doubt as to whether taxes may be levied upon improvements on public lands. This holding was based upon the fact that Sections 4018 and 4019 of the Compiled Laws of 1897, the two sections providing that improvements are to be considered as real property, and then designating what should be considered to be "improvements" are not included in the Codification of 1915, and, therefore, under that part of the saving and repealing clause of the Codification which reads as follows:

"All acts and parts of acts of a general and permanent nature, not contained in this codification, are hereby repealed."

are no longer a part of the law of this State. These statutory provisions being the only authority that has heretofore existed for the levying of taxes upon improvements on public domain, and having been repealed by the last legislature without the enactment of other legislation in lieu thereof, we are of the opinion that there is now no authority to levy taxes upon improvements located upon the public domain, and that from the time of the taking effect of the codification of 1915 such improvements should not be taxed.

However, taxes levied upon improvements located on the public domain previous to the 11th day of June, 1915, the date upon which the Codification of 1915 went into effect, would be a valid levy and could, therefore, be collected, but as stated in the opinion from this office dated July 31 last, the lien for delinquent taxes levied upon such improvements can in no respect attach to the land upon which the improvements are situate.

Mr. Salazar's letter stated that the opinion of July 31 holds that improvements on public lands are personal property, but we do not find anything in that opinion which so holds. The opinion states that if the improvements **should be considered as personal property**, then the tax lien would not attach to the realty, because in this state there is no lien upon real property for taxes levied upon personal property which are delinquent; and **if the improvements should be considered as real property**, then a tax lien for delinquent taxes thereon could not be held to attach to the land because the public domain is not subject to taxation by a state; and, therefore, whether improvements be considered either personal property or realty, no tax lien could attach to the land upon which they are situated for taxes levied before the issuance of a patent.

The subsequent acquisition of the land from the United States could not cause the lien to attach thereto, as the lien becomes a lien at the time of the levy of the tax and cannot be amplified so as to attach to the land afterwards.

We trust that the foregoing will satisfactorily answer your inquiries.