

Opinion No. 15-1643

September 28, 1915

BY: FRANK W. CLANCY, Attorney General

TO: Mr. A. G. Whittier, State Traveling Auditor, Santa Fe, New Mexico.

Penalty of one per cent per month on unpaid taxes.

OPINION

{*215} I have received your letter of yesterday in which you call my attention to Section 5488 of the Codification which provides that in case a tax-payer does not pay his taxes when due the same shall bear interest at the rate of one per cent per month until paid, and you say that a great many treasurers in the state are failing to collect the penalty as provided by that section for one reason or another, and you desire to know whether or not the treasurer can be held personally responsible for the interest which he so fails to collect.

I am of opinion that under one of the provisions of Section 5498 of the Codification his failure to collect the interest subjects him to a penalty of double the amount thereof. The sentence in that section upon which I base this opinion reads as follows:

"In no case shall such interest be released, abated, rebated or reduced, but it shall have all the force and effect of the original tax and become part thereof, and any failure on the part of the county treasurer to add such interest to the tax at the time of collection thereof shall subject him to a penalty of double the amount thereof, for which he and his bondsmen shall be liable, to be recovered by suit brought in the name of the state."

The preceding part of that section relates to the sale of real estate for taxes, and immediately preceding that which is above quoted is a clause with regard to striking off to the county the whole amount of the property upon which taxes have been levied, if the property cannot be sold for the full amount of the taxes, penalty and interest due thereon. It might be argued that the language above quoted refers only to the taxes on property struck off to the county, but to limit the meaning in that way would do violence to that part of the language which refers to "collection thereof," because where property is struck off to the county it is made the duty of the treasurer, under Section 5500, to sell the duplicate certificate to any person who will pay the full face value thereof, with accrued interest, or if it cannot be thus sold it may be sold at public auction at the time of the delinquent tax sale in the next {*216} succeeding year. A sale of the certificate could not be considered as a collection of the taxes and interest within the meaning of the quotation hereinbefore made, and the language used in that part which I have quoted is applicable to every case of collection of taxes. This view is strengthened by notice of the fact that the clause as to the double liability of the treasurer is a re-production of similar language used in Section 10 of Chapter 22 of the Laws of 1899,

with one omission and one addition, and reference to that earlier section will show that beyond all question the liability of the treasurer therein stated was certainly applicable to all penalties upon delinquent taxes. No reason can be assigned for any change in the legislative intention, although it would have been clearer if this provision had been included in Section 5488 by the codifiers, but they were following the arrangement in Chapter 84 of the Laws of 1913, in which the new Section 5488 was Section 31 and Section 5498 was Section 35.

I suggest that it would be desirable to call the attention of every county treasurer in the state to this provision and to the necessity of his conforming to it.