

## Opinion No. 15-1647

October 2, 1915

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

**TO:** Mr. James A. Hall, Portales, New Mexico.

**As to taxation of mortgages held by non-residents.**

### OPINION

{\*220} I have just received your letter of the 30th ult. in which you ask me two questions, the first of which is as follows:

"In your opinion is a foreign bill of exchange subject to taxation within the State of New Mexico, when that bill is executed within the State but is held and is payable without the State?"

I am unable to see how such a bill of exchange can be taxed in this state. The holder of it, if I understand your question correctly, is beyond the jurisdiction of the state and it appears to me that it would be a credit, possibly taxable under the statutes of the state where it is held and is made payable, but not here.

Your second question is as follows:

"Is the mortgage or trust deed given to secure the payment of such foreign bill subject to a separate tax by the State of New Mexico, the real estate held as security being situate in New Mexico?"

That mortgages given to secure the payment of money are taxable as property separate and apart from the land upon which the mortgage is a lien, is fully settled in New Mexico by the decision in the case of Territory v. Building and Loan Association, 10 N.M. 337, but in that case the mortgages were held by a corporation created under the laws of New Mexico and doing business in New Mexico, but where the mortgage is held outside of the jurisdiction of the state, I am of opinion that under the general rule that persons and property not within the territorial limits of the state, cannot be taxed by it, would be applicable. By the decision of our supreme court, the mortgages declared to be property separate and apart from the land upon which it is given and its situs is not fixed by the place where the land may be. We have no legislation as to the taxation of mortgages held by non-residents as far as I am aware, and therefore I do not see how they could be taxed.

In this connection I invite your attention to the opinion in the last published report of this office which you will find at page 209.

In your letter you make reference to the early case of Valencia County against A.T. & S.F.R. Co. which is reported in 3 N.M. 677, on the matter of double taxation, but I hardly think that that case is in point as to the taxation of mortgages separate from the land, and if it were, the case above cited in 10 N.M. would be controlling as a later decision.