

Opinion No. 15-1677

November 8, 1915

BY: FRANK W. CLANCY, Attorney General

TO: Mr. K. K. Scott, Roswell, New Mexico.

Warrants drawn by county road boards not subject to payment of taxes by the person to whom they are issued.

OPINION

{*249} I have today received your letter of the 5th instant enclosing another from John P. Lowry, of Artesia, requesting an opinion on the subject of whether a warrant issued by a county road board against the county treasurer is subject to the payment of the taxes of a person to whom it is issued and who did road work. I see from Mr. Lowry's letter, which I return herewith as requested, that he thinks that he ought not to be held for the taxes because he does not own the property, and the grantee to which he made a deed, assumed all unpaid taxes, that grantee evidently being a corporation from which he had had a loan.

These facts are immaterial because if the treasurer has any right to deduct the amount of unpaid taxes from such warrant, he would be justified in doing so although somebody else had agreed to pay the taxes.

The statute under which the treasurer attempts to deduct the taxes was originally passed in 1901, and re-appears as Sections 5485 to 5487 of the new codification. That statute provides, in substance, that when any bills are ordered paid by the board of county commissioners, the same bill shall have thereon words to indicate that the bills are subject to the payment of any taxes due from the payee or any assignee, as shown by the tax rolls, with a further provision as to orders for the payment of bills drawn by the clerk of the district court for money due to any juror or witness, which is to the same effect. The next section directs the treasurer, when any such bill, warrant or order is presented, to deduct therefrom the amount of taxes, penalties and costs thereon due from the payee or any assignee thereof, and to pay only the balance. It is to be noted that these provisions are applicable only to bills allowed and ordered paid by the board of county commissioners and to orders drawn by the clerk of the district court for payments to jurors and witnesses. I am unable to see how these provisions can be extended to any other bills, warrants or orders.

The county road boards were created by Chapter 54 of [Illegible Word] Laws of 1912, a portion of which re-appears in the codification as Sections 2646 to 2651, and of these sections the only one to be considered is Section 2647. That section declares, in substance, that {*250} all funds for road and bridge purposes shall be expended under the direction of the county road board,

"and the methods for making such expenditures and accounting therefore shall be the same as those now or hereafter required by law in the case of expenditures made by the boards of county commissioners."

The above quoted language is all there is as to the methods of making expenditures by the county road boards. It cannot be said that the provisions of Sections 5485 and 5486 declare methods for making expenditures and accounting therefor by the boards of county commissioners. The statutory provisions as to such methods and accounting are to be found in the codification in Sections 1200, 1211, 1217, 1220, 1222, 1223 and 1228.

I am of opinion that the provisions of the act of 1901 as to the deduction of taxes from the amount due on warrants or orders drawn by the county commissioners or the clerk of the district court cannot be extended to warrants drawn by the county road boards.