

Opinion No. 16-1779

April 10, 1916

BY: FRANK W. CLANCY, Attorney General

TO: Mr. Julian Salas, Estancia, N. M.

As to liability of county to refund a person's money paid on tax certificates which have been held null and void by the district court.

OPINION

{*351} I have received your letter of the 7th instant and have also had a little conversation with Mr. Dunlavy, to whom you wrote on the same subject. You say that the question arises before the county commissioners, as to whether they can pay back purchase money of tax certificates of the county which have been, by the district court, held null and void, and if no funds are available to pay such purchaser, whether interest can be paid him on his money or can a part of the indebtedness be received in the payment of other taxes?

The question as to whether the county is liable at all for any such payment is so doubtful, to say the least, that I advise that the commissioners refuse to make any payment whatever so that the claimants may appeal to the district court and get a judicial determination as to the liability of the county, and perhaps at that same time, some indication as to how the payment shall be made. The only statute of which I have any knowledge, under which any such {*352} repayment can be made, is to be found in Section 5499 of the Codification, which was Section 4072 of the Compiled Laws of 1897, and by the case of Stewart vs. Bernalillo County, 12 N.M., 79, the effect of this statute is limited to the exact matters set out in it, and as far as I can learn, about the claims in your county, it is not set up that by mistake or wrongful act of the collector, clerk, assessor or from double assessment, real estate has been sold on which no tax was due at the time. Unless the facts justify a claim under the section of the statutes, then the county is not liable, but if it is liable under that statute, you will see that interest is provided for.

The amount involved, which is over \$ 3600 as shown by voucher left with me by Mr. Dunlavy, and which I return to you herewith, is quite sufficient to make it the duty of the county commissioners not to pay until ordered so to do by the court.