

## Opinion No. 18-2111

July 24, 1918

**BY:** HARRY L. PATTON, Attorney General

**TO:** Mr. J. F. Findlay, Chairman, Board of County Commissioners, Las Cruces, New Mexico.

Public Funds Must Be Deposited in Qualified Depositories Only, and Where There Are Not Sufficient Depositories in the County, Must Be Deposited in Some Other County. Distraint for Taxes.

### OPINION

We have your favor of July 20th, wherein you ask whether or not you shall strictly comply with the provisions of Section 12, Chapter 57, Laws of 1915, as amended by Section 2, Chapter 70, Session Laws of 1917.

It appears from your letter that the amount of public monies deposited in the banks of Dona Ana county, exceeds the amount for which the banks have qualified as public depositories.

In cases where no bank qualifies as a public depository, or where the amount of public monies, in the custody of the treasurer, exceeds the aggregate amount for which banks have qualified, Section 2, Chapter 70 of the Laws of 1917, requires the excess monies to be deposited in a duly qualified depository in some other county in the state. It seems to me that this section is mandatory in its terms, and that the treasurer has no discretion. In such a case he should take it up with some bank in another county of the state, have the bank qualify as a depository, in the same manner that banks in his own county qualify and after the bank in the other county has so qualified, the excess sum should be deposited in the other county. If this were not true, and if a treasurer could deposit monies in a bank which had not qualified as a public depository, or deposit monies in excess of the amount for which the banks had qualified, then the purposes and the intent of the law would be defeated. We are therefore inclined to believe this section is mandatory, and the treasurer must comply with it.

You also ask as to the collection of taxes due on personal property of saloon owners. You state that the saloons will be closed August 1st, and I presume therefrom that this is the reason you desire the taxes collected at once. You do not state as to whether the saloon keepers own other property in the county or not. Neither do you state whether these men are contemplating leaving the county after the closing of the saloons. Without a more definite statement as to conditions existing in your county in this regard, it would be impossible to determine the best way, or the lawful way in which the treasurer may proceed in collecting the taxes at this time.

Section 5489 of the 1915 Codification, gives the county treasurer authority, when a person is about to remove personal property out of the county, for which taxes are unpaid, or in any manner seeks to put his property out of the reach of the treasurer, to collect the taxes at any time after the assessment book has been placed in his hands, by distraint and sale. In the event the treasurer does not make the distraint and sale, in such a case, he is liable on his official bond for the amount of such taxes, unless they are collected by him in some other manner.

If the people you inquire about are not removing their property out of the county, and are not seeking to avoid the payment of taxes in any manner, I doubt very much whether the treasurer would have authority to collect the taxes by the methods prescribed in Section 5489.

In the collection of these taxes, it occurs to me that your district attorney should have full knowledge of all of the essential facts, and should be able to give you full and correct advice relative thereto. I therefore suggest that you take this matter up with your district attorney at once, and be governed by such advice as he may give you.