

Opinion No. 24-3777

August 19, 1924

BY: JOHN W. ARMSTRONG, Assistant Attorney General

TO: Requested by: Hon. R. H. Carter, State Comptroller, Santa Fe, New Mexico.

Are Warrants and Certificates of Indebtedness, Properly Drawn, Charged With Taxes Becoming Delinquent After the Issuance of the Same Altho in the Hands of an Assignee?

OPINION

{*159} Your inquiry is based upon the following statement of facts:

Pursuant to the provisions of the Salary Law of 1915, and of Chapter 30, Session Laws of 1915, the Board of County Commissioners of Sandoval County issued to Emiliano Lucero, then sheriff of the county, a certificate of indebtedness in the sum of \$ 6,018.00 presumably for settlement for salaries and expenses due. This certificate, which I have seen, is on a printed form and I assume on the form which was, at that time, approved by the Attorney General as to form.

Some time later, the First National Bank of Albuquerque, brought suit against Lucero on a promissory note, and in the progress of the case, this certificate was attached, and a special master appointed by the court to sell the same and pay off the note. The sale was made, to the First Trust and Savings Bank, the price of \$ 6,018.00 being paid, of which the First National received \$ 4,600.00 for the face of the note, \$ 764.43 was paid the bank for accrued interest, \$ 17.15 for court costs, and what was left of the face value, \$ 636.42, was paid the bank's attorney for attorney fees.

The county has been paying since that date on this certificate, keeping interest paid, and gradually reducing the principal, so that the amount now due on the principal, is the sum of \$ 2,568.30. The county is able to pay this amount, but wishes advice as to the following:

There are unpaid and delinquent taxes due the county by Emiliano Lucero amounting to \$ 266.34 and by his wife of \$ 50.68, making a total of \$ 317.02.

{*160} Sections 5485 and 5486 of the Code provides that all certificates issued by a county are subject to taxes. The attitude of the First National Bank is that it is an innocent purchaser, and second, that a certificate is only liable for unpaid taxes on the date of issue, and not on the date of redemption, when held by a third party.

Is this certificate, as now held by the bank, when presented for payment, subject to the taxes of Emiliano Lucero, which taxes accrued after the sale of the said certificate?

If the certificate, in question, carried the quotation or endorsement required by Sec. 407 Chap. 133 S. L. 1921, the Bank could hardly claim to be an innocent purchaser. If it did not contain such quotation, as the law requires, the Bank is probably correct in its contention. We doubt the correctness, however, of the Bank's contention that the certificate is chargeable only with taxes delinquent at time of its issue. If the certificate conforms to the law hereinbefore cited, the Bank would seem to be chargeable with notice that it stands impressed with the liability for the payment of the taxes of both the payee and assignee.