

Opinion No. 25-3799

February 18, 1925

BY: JAMES N. BUJAC, Assistant Attorney General

TO: Requested February 18, 1925, by J. E. Owen, Educational Auditor, Santa Fe, New Mexico.

Lien for taxes on personal property takes effect as a priority when and after the time distraint is made.

OPINION

With reference to your verbal request of even date regarding the question of priority of liens for taxes and the right to distraint property for taxes

Liens for taxes only exist by virtue of statutes creating such liens, or based upon which liens are necessarily implied. Our statutes do not provide for any reservation of any lien in behalf of the public or personal property. Section 225, Chapter 133, Session Laws 1921, provides:

"Such taxation shall also constitute a lien on the property, which may be enforced by the collector by distraint and sale of the property according to law."

From this it would seem that the lien exists only from the time of such distraint and that lien would be secondary to an antecedent mortgage. There are many authorities on this point but the proposition that a lien exists as a priority when and only after the time of such distraint is so well settled I do not deem it necessary to cite authority thereon.

It seems to be from this that it would behoove the various Tax Collectors to distraint property as soon as possible after the taxes thereon become delinquent.