

**Opinion No. [30-107]**

September 4, 1930

**BY:** J. A. MILLER, Assistant Attorney General

**TO:** Mr. E. H. Byers, County Treasurer, Lovington, New Mexico.

TAXATION -- Fees collectable in foreclosure suits. § 141-802, Code 1929.

**OPINION**

I have yours of the 29th ultimo in which you ask to be advised as to what may be collected in connection with delinquent taxes for the recovery of which a foreclosure suit has been commenced, and as well you ask what disposition should be made of costs and mileage collected.

The answer to your inquiry may be found, in part at least, in § 141-802, Codification of 1929, which reads as follows:

"It shall be the duty of the treasurer of each county in this state, at the time of collecting any delinquent tax for the recovery of which suit has been commenced or any judgment recovered for delinquent taxes, to ascertain from the clerk of district court of his county what service and court fees have accrued at the time of collection in any such case pending or adjudged, and to collect, together with the tax, and credit such service and court fees to the fund to which such fees would be credited if received from the clerk of court."

You will note it is provided in § 141-710 that "any individual serving process shall receive the same fees and mileage as is by law allowed to sheriffs." This has special reference to the service of **process** in connection with foreclosure of tax lien certificates.

From the first section quoted, you will note that it is the duty of the treasurer, when collecting any delinquent tax for which suit has been commenced or judgment rendered, **to ascertain from the clerk of the district court** what service and court fees have accrued at the time of collecting, to collect that amount together with the tax, and credit such service and court fees to the fund to which such fees would be credited if received from the clerk of court.

As to attorneys' fees, for which you say claim has been made in the complaint filed, we are of the opinion that attorneys' fees may not be recovered in such suits, and consequently you are not authorized to collect any attorneys' fee in connection with the settlements you suggest.