

**Opinion No. 31-134**

April 21, 1931

**BY:** E. K. Neumann, Attorney General

**TO:** Mr. C. T. Watkins, County Treasurer, Clayton, New Mexico.

{\*65} In your letter of April 18, 1931 you make the following inquiry:

May the County Treasurer receive County Warrants in payment of taxes when the warrants are drawn upon accounts in which there are no funds?

In my opinion, he has no authority to receive such warrants in payment of taxes.

"State or municipal bonds or the coupons therefrom, city or **county warrants**, etc., are not receivable in payment of taxes unless so provided by statute; . . ." Cooley on Taxation (4th Ed.) Vol. 3, Sec. 1252.

"Taxes are levied to raise money for specific purposes, as indicated by the appropriations of the current year, and a taxpayer cannot, by exercising the right of set-off, divert the taxes to another purpose, namely, the payment of the debt due to him." 26 R. C. L. 378.

You are, no doubt, familiar with Sections 141-407 and 141-408 of the 1929 Compilation. Under these Sections, the County Treasurer, before cashing warrants, is required to deduct taxes, penalties and costs due by the payee or the assignee. This is, in effect, a payment of taxes with warrants, but this situation arises only when there are funds available for the payment of said warrants.

There is no statute authorizing the County Treasurer to accept warrants in payment of taxes when funds are not available for the payment of the warrants presented; hence, the general law as above stated would govern.

By Quincy D. Adams,

Asst. Att'y General