

Opinion No. 31-6

January 10, 1931

BY: E. K. Neumann, Attorney General

TO: Honorable Byron O. Beall, Chief Tax Commissioner, Santa Fe, New Mexico.

{*21} Your letter of January 9th states that several of the delinquent tax collectors throughout the state have resigned and that most of the others were expected to resign within the next few days. In connection with this situation you ask, as follows:

1. What is the status of the records in the office of the out-going collector with reference to the new collector's right of possession thereto?
2. Is the new collector entitled to the fees that might arise from suits filed by the outgoing collector {*22} and still pending to be finally prosecuted by the new collector?

By virtue of Chapter 6, Sec. 3, of the Laws of 1929, Special Session (Chapter 141-703 1929 Code) the delinquent tax collectors were placed upon a salary and expense basis, abolishing the old fee system of compensation. Prior to that time, however, it is my understanding that many of the records necessary for proper procedure were compiled by the collector out of his own funds in anticipation of the fees he hoped to collect. Since the passage of the 1929 Law, however, all records compiled or kept by the collector, if there was any cost attached, were paid for by the Tax Commission as provided by law. These former records would, no doubt, be the private personal property of the outgoing collector, if he paid for them out of his own funds, and would not be a part of the records of the office going to his successors. The later records, compiled and kept since the collector went on salary, would be records of his office, in my opinion, and would go to his successor. This, I believe, will answer the first question.

Regarding your second question, the 1929 law (Chapter 141-722) provides that in all suits, which were brought prior to March 1, 1929, the then existing contracts between the Tax Commission and the collectors regarding compensation should be observed, **as long as such collectors remain in office.** No doubt, all of such suits have long since been disposed of, but in the event some are still pending the outgoing collector is entitled to no fee whatsoever, because, in my opinion, the law contemplates that his fees are to be paid only out of monies actually collected by him. It therefore follows that the incoming collector would be charged with the further prosecution of all pending suits without any compensation other than his salary.