

Opinion No. 33-549

January 11, 1933

BY: E. K. NEUMANN, Attorney General

TO: Hon. G. L. Reese, Jr., District Attorney, Lovington, New Mexico.

{*23} Regarding your letter of January 6, 1933, to which was attached a copy of an opinion to Joe Johns, Treasurer of Eddy County, the subject matter thereof is the duties of the treasurer in connection with the payment of bills, warrants, orders or certificates presented for payment by persons owing taxes to the county, with particular reference to Sections 141-407 and 141-408, 1929 Code.

This office has had the matter under consideration and we have taken the broad view and arrived at about the same conclusion that you have, namely that the treasurer must deduct taxes due the county from **any** warrant presented to him for payment.

This view has been criticized by some and particularly by Mr. Newell, formerly the District Attorney of the Third Judicial District, who takes the narrow view of the proposition.

Referring to Sections 141-407 and 141-408, I quote from my letter to Mr. Newell: "It is true the matters you mention seem somewhat pertinent, but upon the other hand when reading the two sections, one seems to be entirely disconnected from the other, in so far as the relation of the payments by the county treasurer are concerned. The law specifically states that any warrant shall be refused by the county treasurer when the payee is indebted to the county for taxes. Now, it may be true, as you state in your letter that it refers back to the previous section. The previous section, however, refers only to those warrants which shall be stamped by the person drawing same and has nothing to do with the payment thereof. The following section provides that the treasurer regardless of the stamping, or whatever may appear upon the warrant shall refuse to pay **any** warrant out of county funds where the payee owes taxes.

"A good many of our laws are difficult of interpretation because of the condition which prevails in the section or sections under consideration, and I suppose that the true meaning thereof can be reached only by a court's decision."

As is indicated, we are of the opinion that until a court decision is somehow procured, your advice to Mr. John's should be followed.

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