

## Opinion No. 18-2099

May 28, 1918

**BY:** HARRY L. PATTON, Attorney General

**TO:** Honorable Chester A. Hunker, District Attorney, Las Vegas, New Mexico.

On Division of County, Collector's Assessment of Omitted Property of the New County For Past Years Should Be Made by the Treasurer of the Parent County.

### OPINION

We have your favor of the 25th instant, wherein you ask this office to advise the Treasurers of Guadalupe and De Baca counties regarding the making of a collector's assessment on omitted property for years prior to 1917.

The question arises as to which official should make the assessment and collection on omitted property which lies within De Baca County, but which was formerly a part of Guadalupe County.

You state that in your opinion such assessment and collection should be made by the Treasurer of Guadalupe County, for the reason that he has all the old tax records in his possession, while the Treasurer of De Baca County possesses no records from which he could determine whether any property had been omitted in the past. You also cite us to a recent opinion of our Supreme Court in the case of Lea County v. Chaves County, 169 Pac. 306, and further call our attention to the fact that the tax provisions of the law creating De Baca County, are identical in the act creating Lea County.

We think that your opinion is correct. The opinion of the Supreme Court, above cited, held that it was the duty of the Treasurer of the parent county to collect delinquent taxes on property in the new county, and we think that the assessment and collection of omitted property is a parallel situation to which the holding of the Supreme Court applies. Our Supreme Court said:

"As heretofore shown in the quotation from Cooley on Taxation, supra, in the absence of legislative direction to the contrary, the duty of collecting the tax, therefor assessed, will also be upon the officer of the old municipality. There is nothing in the act creating Lea County which requires or authorizes the treasurer of Lea County to collect these taxes, nor is there any provision made for the tax rolls of the treasurer's office of Chaves County showing such taxes, to be copied or transferred to the county of Lea. Clearly as to the taxes provided for in Section 8, it was contemplated that all delinquent taxes for school and municipal purposes should be collected by the treasurer of Chaves County. Property taxes are collected at the same time as school and municipal taxes and from the same rolls, and no additional burden is thus placed on the treasurer of Chaves County, and there is no reason why he should have been required to collect one or two

classes of these taxes and not all of them. To say the least, the act in question is silent upon the question as to which of the two officers should collect the taxes, and this being true, under the rules stated, the duty would devolve upon the treasurer of Chaves County."

We think the above language is applicable to the collection of taxes on omitted property the same as to the collection of delinquent taxes. You will note that the Supreme Court makes the same point that you discuss in your letter, namely, the lack of records in the office of the Treasurer of a new county from which he could make collection of past taxes.

As requested by you, we are sending copies of this letter to the Treasurer of both Guadalupe and De Baca Counties.