

Opinion No. 46-4968

December 5, 1946

BY: C. C. McCULLOH, Attorney General

TO: Mr. C. R. Sebastian State Comptroller Santa Fe, New Mexico

{*287} This is to acknowledge receipt of your letter of November 30, 1946 in which you request the opinion of this office on matters pertaining to the powers and duties of a county treasurer in assigning tax sale certificates and issuing tax deeds.

The particular fact situation which you present is as follows:

Certain property was sold for taxes on January 8, 1943 and a tax sale certificate was issued wherein the redemption period was set forth as January 8, 1945. No deed has been issued to the State Tax Commission, but the tax sale certificate is of record. A man now desires to purchase the property, and the following questions are presented:

(1) Under the above fact situation, when does the period of redemption expire?

(2) Is the county treasurer authorized to assign the tax sale certificate and issue a tax deed to the person in question, notwithstanding the fact that the two (2) year period of redemption has expired?

Since the problems presented appear to be of significance to all county treasurers in the state, I shall go into the subject matter to some length.

Section 76-701 of the 1941 Compilation provides as follows:

"On the third Monday in January of each year the treasurers of the several counties of this state shall offer for sale and sell at public vendue the real property, including several rights of timber, minerals or other severed interests, situate in their respective counties upon which taxes are more than six (6) months delinquent as shown by the tax rolls of the county for any year or years, **and which has not been sold to, and title thereto retained by, the state by virtue of any prior tax sale.** Such sales shall be held in the office of the county treasurer, commencing at 10:00 a. m., on the third Monday in January and continuing to 4:00 p. m., and during the same hours for the next consecutive four (4) days unless all of the property so offered for sale shall sooner be sold to purchasers other than the state." (Emphasis ours).

Section 76-702 of the 1941 Compilation sets up the procedure which the county treasurers shall follow in giving notice of sale, posting said notice, and mailing notice of the sale to the delinquent taxpayer.

Section 76-705 of the 1941 Compilation provides that the county treasurer shall execute and deliver a certificate of sale to any bidder to whom the property is sold.

Section 76-706 of the 1941 Compilation refers to tax sale certificates executed by **succeeding treasurers**, and provides as follows:

"In cases where sales of property have been made for delinquent taxes as provided by chapter 27 of the laws of 1934, Special Session of the New Mexico {*288} legislature, **and the tax sale certificates were not executed by the treasurer making the sale, prior to the expiration of his term of office, it shall be the duty of the successor in office to the treasurer making such sales to execute tax sale certificates in the manner and form provided in section 7 of said chapter 27 of the Laws of 1934, Special Session of New Mexico legislature (Sec. 76-705),** and same shall have all the force and effect as if same had been made by the treasurer making such sale; provided, that such succeeding treasurers in office shall make and execute all tax sale certificates, as hereinabove provided, within three (3) months from and after such succeeding treasurer takes office." (Emphasis ours).

Section 76-707 of the 1941 Compilation provides, among other things, that on the 5th day of the sale of property on which no acceptable bid has been received, such property shall be sold to the State of New Mexico.

Section 76-711 of the 1941 Compilation sets up the manner of assignment of certificates of sale by county treasurers, and provides that a certificate of sale issued to the State of New Mexico may, at any time before the redemption period of two (2) years shall have expired, be sold and assigned by the county treasurer to anyone applying for such assignment.

This section also provides that the county treasurer shall notify the State Tax Commission when such assignment is made.

Section 76-713 of the 1941 Compilation provides that property sold under the provisions above set out, may be redeemed by the owner (or by any person having a legal or equitable right in the property) at any time **before two (2) years from the date of the sale.**

Section 76-717 of the 1941 Compilation refers to the issuance of tax deeds and provides, in part, as follows:

"At any time after the expiration of two (2) years from the date of the tax sale certificate, where the property has not been redeemed, on demand of the holder of the tax sale certificate, the presentation thereof to the county treasurer, and the payment in full of any and all taxes and interest unpaid at the date of application for deed, except as provided in section 33 (Sec. 76-634) thereof, the county treasurer shall issue and deliver to the legal owner and holder of said tax sale certificate a tax deed to the property described therein. * * * County treasurers shall issue a deed to the state of

New Mexico, in the form as in this act provided, and shall execute separate deeds for the property described in each tax sale certificate sold to the state and not assigned, upon the expiration of the period of redemption."

On several different occasions the Supreme Court of the State of New Mexico has passed on some of the pertinent provisions of law set out above.

In Hood v. Bond, 42 N.M. 295, our Supreme Court held that the **two (2) year period for redemption from tax sales begins to run from the date of the sale itself**, rather than from the date of the tax sale certificate.

In Hughes v. Raney, 45 N.M. 89, our Supreme Court held that a county treasurer's failure formally to strike off and declare sold to the state on the fifth day of the sale, all property on which no acceptable bid had been received, did not deny to the **State** the right to treat such property as sold to it for the purpose of issuing and assigning tax sale certificates thereon, and, subsequent to the expiration of the redemption period, to issue tax deeds thereto.

In effect, the court also held that property unsold to others at the close of the tax sale, is sold to the state by operation of law.

{*289} A very important and controlling case on the questions involved is Kerehner v. Sganzini, 45 N.M. 195, in which our Supreme Court held:

(1) That a county treasurer was without authority to assign tax sale certificates after the expiration of the two-year period of redemption, since after such period the taxpayer had a preferential right to repurchase the property at a sale by the state.

(2) That the general rule is that assignments of tax sale certificates must be made at or within the time prescribed by law.

(3) That the action of a county treasurer in assigning a tax sale certificate after his power to do so had been exhausted by the expiration of the two (2) year period of redemption, was "ultra vires" and void.

In view of the statutes and the cases above set out, it is my opinion that: (a) The period of redemption (2 years) runs from the date of the original tax sale, and, under the particular facts given, expired on January 8, 1945; (b) The county treasurer is not authorized to assign the tax sale certificate or issue a tax deed to the person in question, since the two (2) year period of redemption has expired.

By WM. R. FEDERICI,

Asst. Atty. General