

Opinion No. 47-5034

May 28, 1947

BY: C. C. McCULLOH, Attorney General

TO: Hon. John E. Miles Commissioner of Public Lands Santa Fe, New Mexico

{*55} We wish to acknowledge receipt of your inquiry of May 21st, 1947 wherein an opinion of this office was requested to the following questions:

1. In view of the specific provisions of the standard form Purchase Contract requiring interest in advance, and of the statutes with reference to anniversary payments, may the Commissioner accept principal payments before contract maturity less interest paid in advance and funded, and issue a patent to land?
2. Does the Commissioner have authority to accept the full amount of the principal and cause the interest paid in advance to be refunded under the refund law?
3. Where a purchaser desires to pay out the principal amount of his contract before any anniversary date and is delinquent in interest payment required by the contract to be paid in advance, may the Commissioner accept interest from last anniversary date to date of proffered payment of principal, or is he required to collect delinquent interest for one year from last anniversary date plus the principal in full?

Answer to the three inquiries made is contained in Sec. 8-810 of the New Mexico 1941 Compilation which provides as follows:

"At any time after sale and prior to the expiration of thirty (30) years from the date of the contract, the purchaser or his successor in interest may pay all or any part of the purchase price due on any contract for purchase of state lands, but no payment shall be accepted, other than the first payment, for less than one-thirtieth of ninety-five (95) per centum of the purchase price, **nor be effective for credit on any date other than the anniversary of the date of the contract next following the date of tender.**"

In view of the aforementioned statute it is my opinion the Commissioner lacks authority to accept for credit principal payments before contract maturity, less interest paid in advance and funded; that he lacks authority to accept for credit the full amount of the principal and cause the interest paid in advance to be refunded; that he lacks authority to accept for credit only payment of delinquent interest where a purchaser tenders the principal amount due on said contract.

In other words, any payment, aside from the initial one, including full payment of the balance due on said contract must be **credited** by the Commissioner as of the anniversary date of the contract regardless of the date the purchaser might tender

same. It therefore follows that if the principal cannot be discharged until anniversary date, interest likewise must be paid on the balance owed to anniversary date.

Trusting the aforementioned satisfies your inquiry, I am

By ROBT. V. WOLLARD,

Asst. Atty. General