

Opinion No. 51-5345

March 15, 1951

BY: JOE L. MARTINEZ, Attorney General

TO: Mr. C. C. McCulloh Attorney, State Tax Commission Santa Fe, New Mexico

{*23} This is in reply to your letter of January 3, 1951. First, I want to say that due to the tremendous amount of work that we had during the Legislature, I have been unable to reply to your letter earlier because I did not have the necessary time to give to this matter to intelligently answer it.

The last paragraph in Section 76-730, New Mexico 1941 Compilation, reads as follows:

"When property deeded to the state for unpaid taxes has been sold by the state tax commission to a stranger to the title to said property, and if within one (1) year from the date of execution of a deed thereto by said state tax commission, said deed shall prove to be invalid or illegal for any reason, the state tax commission may refund the amount received from the purchaser for said property, said refund to be deducted from the amount on deposit or hereafter deposited in a suspense fund in the state treasury that ordinarily would be remitted to the county treasurer of the county in which said property is situate."

You desire an official opinion from this office as to our construction of the above quoted paragraph. After reading the said paragraph carefully and considering the facts as you set them out in your letter, my construction and interpretation of the paragraph is that the statute is not mandatory as the wording specifically says that the State Tax Commission **may** refund the amount received from the purchaser for said property, if the deed proved to be invalid.

According to the facts stated in your letter, the discovery of the invalidity of the deed did not appear until after the year. This paragraph in question specifically says: "that if within one year from the time of execution of a deed thereto by the State Tax Commission said deed shall prove to be invalid or illegal for any reason, the Tax Commission may refund any amount received from a purchaser for said property."

Now considering this fact that the discovery of the deed was not made until after the year, coupled with the fact that the statute is not mandatory, the question as to whether payment should be made, even though sale of the tax deed to to the state as well as the deed from the State Tax Commission to the purchaser was void since the beginning, leaves this whole matter, in my opinion, within the discretion of the Commission as to whether they want to make payment or not.