

Opinion No. 58-211

October 24, 1958

BY: OPINION OF FRED M. STANDLEY, Attorney General Alfred P Whittaker, Assistant Attorney General

TO: Mr. F. Wayne Laws, Chief Tax Commissioner, New Mexico State Tax Commission, Santa Fe, New Mexico

QUESTION

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Is a school teacher who is under contract to teach for a municipal school district, or a janitor employed by a county rural school district or by a municipal school district, prohibited from purchasing through the State Tax Commission under the provisions of Section 72-8-4, tax delinquent property as to which the state has acquired title for delinquencies for years prior to 1949?

CONCLUSION

No.

OPINION

ANALYSIS

Section 72-8-4, N.M.S.A., 1953 Compilation, prohibits certain persons from purchasing from the state property sold for delinquent taxes in the following language:

"No state official, deputy thereof, or person employed in any capacity by the state, or any county, or municipality, shall be interested or concerned, directly or indirectly in the purchase of any lands, lots or other property sold by the state tax commission under the provisions of law relating to sale of delinquent tax property. Any violation of the provisions of this section shall be punishable by removal from office of such officer, deputy or employee."

We understand from your reference to the date of tax delinquency that the transaction in question is subject to the proviso of Section 72-8-45, which continued in effect the provisions of existing law as to the administration of property acquired by the state for delinquent taxes for 1949 and prior years, as part of the statute which generally revised the entire procedure for such administration (Ch. 160, Laws 1953).

Your question then resolves itself to this - whether the employees identified fall within the prohibited class.

The provisions of Section 72-8-4 were construed by the Supreme Court in *Brown v. Bowling*, 56 N.M. 96 (1952). In that case a rural school teacher brought an action to quiet his title to real estate acquired from the state through the State Tax Commission, the land having been acquired by the state for delinquent taxes. The Supreme Court viewed the statute as a penal statute and stated the following at page 100 of 56 N.M.:

"This statute plainly states the class of persons affected by its provisions and it is obvious that its purpose is to prevent those persons employed by state, county or municipality from dealing in tax titles or in tax sale certificates because out of such employment by state, county or municipality, some advantage might be gained and used to the detriment of the taxpayer and the public. The state, county and municipality and its officers and employees are directly engaged and concerned with the assessment, levy and collection of taxes.

"Surely it cannot be successfully argued that a rural school teacher because of her employment by a County Board of Education should by construction be said to be a person of a class who might profit unduly or unfairly from the purchase of tax deeds or tax certificates because of such employment. To so hold would be to enlarge the terms of the statute both as to words and meaning."

We conclude that the reasoning of the Supreme Court applies equally to the persons named in your present inquiry, and that they are not within the class prohibited from purchasing such property through the State Tax Commission.