

Opinion No. 14-1246

June 15, 1914

BY: FRANK W. CLANCY, Attorney General

TO: Honorable George E. Remley, Cimarron, New Mexico.

TAXES.

Procedure in regard to the sale of tax certificates.

OPINION

{*109} I have your letter of the 12th inst. relative to the construction to be given to Section 36 of Chapter 84 of the Laws of 1913, as to which you suggest that the reading into that section of the word "until" or "unless" after the word "due" in the fourth line on page 153 of the printed laws would make it more intelligible and would probably give effect to what you take to be the legislative intent. I doubt if we could persuade any court to read into such a statute a word which would quite change the meaning, but I would be greatly inclined to agree with you that this would effectuate the intention of the legislature were it not for the fact that a review of past legislation tends to negative that idea.

The first legislation on the subject of the sale of tax certificates, where the property has been struck off to the county for lack of bidders, will be found in Section 26 of Chapter 22 of the Laws of 1899, a part only of which section is material to this discussion and that is as follows:

"In case any property shall be bid in by the county, as provided in Section 22, the duplicate certificate of such sale shall be sold by the tax collector to any person who shall pay the face value thereof with accrued interest; and if the same cannot be sold at private sale within one year from the date of such certificate, all the said certificates shall be sold at public auction to the highest bidder for cash, by the collector or his successor in office at the time of making sales of property for delinquent taxes for the succeeding year: * * *"

You will see that the legislature first provided for a private sale at the full face value and if not sold within one year that the certificate should be sold at public auction to the highest bidder.

By Section 1 of Chapter VII of the Laws of 1901, the above quoted section was amended by inserting after the word "cash" the following words, -- "which in no case shall be less than the amount of taxes due and delinquent upon the property described in said certificate." By this amendment it would seem that the legislature intended not to let the certificates go without restriction to the highest bidder for cash, but required not

only the payment of the taxes for which the property had been sold, but any other taxes which might be due and delinquent.

The law appears to have remained in this condition until 1905, when the legislature adopted Chapter 134 of the laws of that year, the first section of which reads as follows:

"In case any property shall be bid in by any county as *{*110}* provided for in Section 22 of the act embraced in Chapter 22 of the laws approved March 1, 1899, the duplicate certificate of such sale shall be sold by the tax collector to any person who shall pay the face value thereof with accrued interest and if the same cannot be sold at private sale within three years from the date of such certificate, such certificate shall be sold at public auction to the highest bidder for cash by the collector in office at the time of said sale after said collector shall have posted a notice giving a statement of the proposed sale, said notice to be posted on the front door of the court house for not less than four weeks prior to said sale."

By this change the legislature substantially went back to the law as it was first enacted in 1899, giving, however, three years within which to sell at private sale and at the end of that time the certificate was to be sold to the highest bidder for cash. This last statute of 1905 is specifically repealed by Section 1 of Chapter 84 of the Laws of 1913.

Another significant fact in this connection is that in House Bill 344, as introduced, it was clearly provided that the certificate might be sold to the highest bidder for cash at the time of the regular sale for delinquent taxes in the next succeeding year, the only limitation being that the person assessed should not be allowed to purchase the certificate for less than the full amount due. That section was as follows:

"When any property shall be struck off to the county as aforesaid, it shall be the duty of the collector to sell and assign the certificate of such sale to any person who will at any time pay the full face value thereof with accrued interest, and if the same cannot be sold at private sale before the regular sale of property for delinquent taxes in the next succeeding year, such certificate shall be sold at public auction to the highest bidder for cash by the county collector then in office, but in no case shall the person assessed for such property be permitted, directly or indirectly, to become the purchaser of such certificate of sale at such public auction for less than the full amount of the taxes and interest due, but his liability and the liability of such property for such taxes shall continue."

Before the bill got through, however, this section had been carefully changed and the only inference to be drawn is that the legislature did not intend to permit a certificate of sale to be sold for any less than the full amount of taxes and interest due.

Your idea for the public good is that it would be better to get rid of these certificates for even less than the full amount due and realize something for the public treasury rather than carry them on indefinitely with but little prospect of ever getting the full amount. That must have been what the legislature intended and desired in 1899, and then for

some reason in 1901 it abandoned that intention and desire and put the limitation upon the later sale that it should not be for less than the full amount of taxes due and delinquent upon the property. This appears not to have worked well or not to have satisfied the legislative mind, because in 1905 there was a legislative {*111} reversion to the original intention. The specific repeal of the act of 1905 would indicate a legislative intent to abandon the permission to sell, no matter how much was realized and to justify the inference that Section 36 of the Act of 1913 as printed expresses the ultimate purpose of the legislature.

I agree with you fully as to the unfortunate consequences of this legislation, but that does not seem to present any argument which can assist us. As the act stands, I do not believe that it authorizes more than one advertising for sale of the duplicate certificate, as authority is given only to make the sale in the next succeeding year at the time of the regular delinquent tax sale. If not sold then, there is no statutory direction that it should ever be advertised thereafter or sold at public auction. The authority to the collector to sell to anyone who will pay the full face value with accrued interest probably continues.

I am reluctantly forced to the conclusion that the last legislation does not permit the sale of such certificates for anything less than the full amount of the taxes and interest due.