

Opinion No. 14-1321

September 14, 1914

BY: FRANK W. CLANCY, Attorney General

TO: Mr. A. M. Amsden, Farmington, New Mexico.

TAX SALE.

Mortgagee has a right to redeem the mortgaged property from a tax sale.

OPINION

{*179} Upon my return from a week's absence I find your letter of the 8th instant acknowledging receipt of my previous letter of the 3rd in reply to your inquiry regarding the right of a mortgagee or trustee to redeem property sold for taxes.

In my former letter I reached the conclusion, based upon an examination of Section 4095 of the Compiled Laws of 1897, of Section 23 of Chapter 22 of the Laws of 1899 and of Section 38 of Chapter 84 of the Laws of 1913, that a mortgagee would not have such a right {*180} of redemption, and that the right is limited to the former owner of the property. I have, however, received two letters from widely separated parts of the state calling my attention to Section 4103 of the Compiled Laws of 1897, which I had entirely overlooked. I believe that I never before had occasion to consider this question, and when I found, in tracing back the legislation, that Section 4095 of the Compiled Laws, fully covered the right of the mortgagee to redeem, it did not occur to me that there could be another section on the subject. Section 4103 is as follows:

"In cases when real estate is mortgaged, if the mortgagor fails or neglects to pay the taxes due thereon the mortgagee may pay such taxes or redeem such real estate if sold for taxes, on payment of any such mortgage, or in the action to enforce the same, the mortgagee may demand the taxes so paid, with interest thereon at the rate of twenty-five per cent. per annum, or include the same in any judgment rendered on the mortgage, and any taxes so paid by the mortgagee shall be a lien on such land so mortgaged until the same shall be paid."

I am of opinion that there is no inconsistency between this section and the later legislation of 1899 and 1913, and that Section 4103 of the Compiled Laws still continues in force and, therefore, a mortgagee has a right to redeem the mortgaged property from a tax sale.

It is not an agreeable thing to be compelled to admit having fallen into an error, but no man should hesitate to do so when once convinced that he is wrong, and I feel under great obligations to my correspondents who so promptly called my attention to this unrepealed section. I will say, however, in view of the great amount of work imposed

upon my office and the necessity of rapidly disposing of it with an insufficient number of assistants, I am only surprised that errors like this have not been frequent.