

## Opinion No. 14-1346

October 5, 1914

**BY:** F. W. CLANCY, Attorney General

**TO:** Mr. Frank Herron, Las Cruces, New Mexico.

### TAXATION.

Authority to segregate any particular piece of real estate and receive taxes thereon, must depend upon how the property has been assessed.

### OPINION

{\*206} I have just received your letter of the 3rd inst., in which, after calling attention to Section 23 of Chapter 84 of the Laws of 1913 which prohibits the changing of the tax roll, except by direction of the district or supreme court, you refer to Section 4103 of the Compiled Laws of 1897, which provides that when real estate is mortgaged {\*207} and the mortgagor fails or neglects to pay taxes due thereon, the mortgagee may pay such taxes or redeem such real estate, if sold for taxes, which you say seems to provide that after a tax sale, a mortgagee may require the collector to segregate the property upon which he has a mortgage, and allow him to redeem that particular piece. You then ask whether the tax collector should not segregate such particular piece of property so mortgaged, and permit the mortgagee to pay the taxes upon that piece of property before the tax sale.

I think the authority to segregate any particular piece of real estate, and to receive the taxes due thereon, whether before or after a tax sale, must depend upon how the property has been assessed. Each parcel of real estate ought to appear on the tax roll with its separate value, and if it does so appear, there is no difficulty in segregating it from other property assessed to the same owner, and permitting the payment of the taxes thereon but it is often the case with the imperfect methods in use in our assessors' offices, that a number of distinct and separate pieces of real estate are valued as a whole, and in that case, there is no way that the collector can say that any particular piece has a distinct and separate value from the other pieces of property.

I have no doubt that at any time after the tax roll is made up, if the valuation and amount of tax on any piece of real estate can be ascertained therefrom, the owner or a mortgagee may pay the taxes due on that piece of property without paying upon the remainder of the property.