

## Opinion No. 14-1386

November 16, 1914

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

**TO:** A. W. Hockenull, Assistant District Attorney, Clovis, New Mexico.

### TAXATION.

1. Redemption of part of property sold for taxes.
2. Payment of taxes upon part of property at will of taxpayer.

### OPINION

{\*247} I have your letter of the 13th inst. in which you ask an opinion from me relative to the redemption of tax certificates. You say, it has been the custom of the treasurer of your county to advertise the sale of property for delinquent taxes, and to sell either to the county or an individual all the property on which taxes had not been paid, and if the property were in several tracts and worth thousands of dollars, it has been sold for the amount of taxes against it, that is, all the property owned by any individual. You further say that in several instances, the owner has desired to redeem only a part of the property, and the collector has been permitting this to be done, but as the county has recently acquired a new treasurer, he desires to know if he is compelled to accept part payment on a tax certificate and issue a certificate of redemption as to only a part of the taxes included in the tax certificate, and especially when it is held by an individual purchaser.

In the first place, I think I should call attention to the fact that neither under the former statute to be found in Chapter 22 of the Laws of 1899, nor under the present law, which is printed as Chapter {\*248} 84 of the Laws of 1913, would it be proper to sell all of the property owned by any individual for the amount of taxes against it, if the sale of a portion thereof would realize the amount due. By reference to Section 22 of the Act of 1899, you will see that the collector is required to offer for sale separately, each parcel of property included in the list, or so much thereof as may be necessary to realize the amount due, and further that if any of the property to be sold were in too large a tract or tracts to be conveniently sold, he should offer the smallest tract in acres, for which anyone would bid the amount of the tax and penalty, beginning at the northeast corner of the whole tract. Sections 34 and 35 of the Act of 1913 contain similar provisions as to each parcel being offered separately with a statement that the collector shall sell no more than will be sufficient to pay the amount due. Failure to observe these limitations might be sufficient to invalidate a sale, especially under the new Act of 1913, which carefully omits the provisions to be found in Section 4101 of the Compiled Laws of 1897 as to the prima facie effect to be given to the tax collector's deed.

I am unable to discover any authority of law permitting the redemption, after a tax sale is once made and a certificate issued to a purchaser of a part of the property covered by the certificate by the payment of a part of the money which the purchaser at the tax sale gave for the certificate. Under the former law, by Section 23 of Chapter 22 of the Laws of 1899, the certificate, when recorded, vested in the purchaser a complete legal title to the real estate described therein, subject to redemption by the former owner within three years by paying the collector for the use of the purchaser, the amount of purchase money, with interest, together with any later taxes which may have been paid upon the real estate by the purchaser. This clearly means the payment of the whole amount of the purchase money with the prescribed interest, and there is no way that the collector can divide that up so as to be binding upon the purchaser at the tax sale. The collector is practically the agent of the purchaser at the tax sale as well as of the redeeming owner, and he has no authority to do anything which would impair the value of the certificate of tax sale in the hands of the purchaser.

The foregoing is equally applicable to conditions under the Laws of 1913, as you will see by reference to Section 38 of Chapter 84 of the laws of that year.

Another proposition as to which you desire an opinion as stated in your letter, is as to whether the treasurer is compelled to segregate a tax-payer's property and permit him to pay on the part he chooses and leave the tax on the remainder of his property unpaid. You further explain this, however, by putting the question as to whether a tax-payer can require the treasurer to accept taxes on his personal property and leave the taxes on his real estate unpaid or vice versa.

This seems to present several matters for consideration. I have no doubt where a tax-payer owns several pieces of real estate which are listed and valued separately, so that the tax due on any one {\*249} can be computed and segregated from the total, that he should be allowed to pay on such parcel as he desires, without paying the whole. When property is listed and valued in this way, as it ought to be, a lien attached to each separate parcel of the real estate for the tax upon that particular parcel. This, however, does not cover the whole of your difficulty.

Under the former statute of 1899, which provided for the obtaining of a judgment against tax-payers, which was to be satisfied by the sale of property described in the delinquent tax list, the sale could be of the property so described for the purpose of satisfying all taxes due, whether upon real or personal property. If a personal judgment were obtained against the tax-payer, of course, any property which he has would be subject to sale, the same as under execution in any other case. By Section 4064 of the Compiled Laws of 1997, the collector was authorized to collect taxes by distress and sale of personal property, and this extended to all kinds of taxes, whether on real estate or on personal property, and this provision is re-enacted, in substance, in Section 33 of Chapter 84 of the Laws of 1913. In other words, the collector appears to be authorized to make the personal property liable for all taxes, but there is no distinct provision of statute that real estate shall be liable for taxes on personal property.

It appears to me that the only way under our statutes as they now exist, for you to get at real estate for the payment of personal property taxes is to obtain a personal judgment for such taxes against the owner and under execution levy upon the real estate. The fact that he might have paid the taxes due on the real estate would not relieve him from his personal liability for the other taxes, and when judgment is obtained, that personal liability could be enforced by levy upon any kind of property which he owns.

It is to be hoped that at the approaching session of the legislature, when the subject of taxation will be one of the first things pressing upon legislative attention, some better and more satisfactory legislation can be had as to these details.

You speak of taxes being lost on account of the removal of personal property from the county and state, and as to this, it will be well to call the attention of the collector to the provisions of Section 32 of Chapter 84 of the Laws of 1913, which makes it his duty, whenever informed, that a person is about to remove personal property out of the county upon which taxes are unpaid, by distraint and sale to collect such taxes at any time after he has received the tax roll and failure so to do subjects him to liability for the amount of the taxes.