

Opinion No. 15-1432

February 3, 1915

BY: FRANK W. CLANCY, Attorney General

TO: Hon. J. D. Cutlip, Tucumcari, N. M.

As to when three-year period for redemption of property sold for taxes expires.

OPINION

{*22} I have just received your letter of the 1st inst. in which you ask my opinion upon the following facts:

On January 30, 1912, you bought a lot at a sheriff's tax sale for taxes of the year 1909. On March 18, 1912, the former owner conveyed the lot to a third person. The tax sale to you was not redeemed within the three years specified by the statute according to the County Treasurer who insists that sale was made at 10 o'clock in the forenoon on January 30, 1912, and that, therefore, the three years' time expired at 10 o'clock on January 30, 1915. At 3 o'clock of that date, the purchaser from the original owner tendered the proper amount for the redemption of the tax sale certificate to the Treasurer. You desire to know on what day and at what hour of said day the time for redemption was up, and also whether the purchaser from the former owner becomes a "former owner" of the property within the meaning of the law.

My opinion is that the three years for redemption did not expire until the close of January 30, 1915. This is in accordance with a general rule as to the computation of time which has, however, {*23} been distinctly specified in the seventh sub-division of Section 2900 of the Compiled Laws of 1897. That sub-division being as follows:

"In computing time, the first day shall be excluded and the last included unless the last falls on Sunday in which case the time prescribed shall be extended so as to include the whole of the following Monday."

Under this rule, it is obvious that excluding from the computation January 30, 1912, three full years would not be complete until the expiration of January 30, 1915, as a general rule the law takes no notice of fraction of days.

Your question as to whether the purchaser from the former owner is to be considered as a former owner within the meaning of the law so that he may redeem from a tax sale, is evidently based upon the language in Section 23 of Chapter 22 of the Laws of 1899, which declared that such sales are "subject to right of the former owner to redeem," and further that "the former owner shall have the right to redeem the same."

An argument in favor of a narrow construction of this language so as to limit it to the owner who owned the property prior to the tax sale, may possibly find some support in the fact that in the same act of 1899, Section 4095 of the Compiled Laws of 1897 was specifically repealed, that section giving the right of redemption to "the owner, his agent, assignee or attorney or any person holding a lien of record thereon." Still, I do not feel at all certain that the courts would hold to such a narrow and harsh construction of the act. They might regard the provision from the actual owner as his representative and standing in his place with a right to redeem the property, as without such redemption his purchase thereof would be of no value whatever. This would harmonize with the general tendency of the courts strictly to construe all matters relating to taxation and tax sales by which an owner can be divested of his property.

We also have a provision of law in Section 4103 which authorizes a mortgagee to redeem real estate sold for taxes and the courts would be reluctant to say that a mere mortgagee could have such a right when a purchaser of the whole title could not.

My opinion is that the purchaser ought to be allowed to redeem, but as different minds look at such things differently, I will not venture to predict what the courts might decide.