

Opinion No. 15-1456

March 3, 1915

BY: FRANK W. CLANCY, Attorney General

TO: Mr. George F. Bruington, Aztec, N. M.

As to the correct rate of interest to be charged on delinquent taxes.

OPINION

{*44} I have had your letter of the 23rd ult. on my desk for four days but have not been able sooner to get time to answer. In that letter you ask what is the correct rate of interest for the county treasurer to charge on delinquent taxes which had been levied prior to the enactment of Chapter 84 of the Laws of 1913, or in other words, you ask if the law of 1913 repeals the prior law which provided for a charge of 18 per centum per year on delinquent taxes.

It is my opinion that the provisions of Section 31 of the act of 1913 to which you refer, are prospective entirely, but it is a fact that by the first section of that act the earlier law was expressly repealed, the earlier statute being Chapter 22 of the Laws of 1899. That act did not provide for interest on delinquent taxes, but imposed penalties of one and four per cent as you will see by reference to Section 10. This was amended, however, by Chapter 96 of the Laws of 1901 so as to make the penalty for nonpayment one per cent only. By Section 23 of the act of 1899 it was provided that a tax sale should be subject to the right of the former owner to redeem within three years by paying the purchase price at the sale, with interest at 1 1/2 per cent per month from the date of sale. I assume that your inquiry relates to the interest chargeable upon such redemption. I am of opinion that the purchaser at a tax sale made prior to the adoption of the statute of 1913, acquired a vested right to the 18 per cent interest as a condition of redemption, and even if the legislature had clearly provided a change in that rate, such a provision would be invalid as impairing the obligation of a contract. I believe that purchasers at tax sales made prior to 1913 have a right to insist upon the 18 per cent interest.

{*45} You further ask if it would make any difference whether a certificate of sale had or had not been issued or whether the certificate of sale was dated after the enactment of the Law of 1913. If the sale were actually made, I do not see how the failure of the ministerial officer whose duty it was to make the certificate, to perform that duty, could impair the rights of the purchaser.