Opinion No. 15-1528

May 15, 1915

BY: FRANK W. CLANCY, Attorney General

TO: Mr. A. W. Hockenhull, Clovis, N. M.

Sale of property for delinquent taxes.

OPINION

{*113} Your letter of the 11th inst. was received yesterday, but I was so occupied in the supreme court that I was unable to give it any attention until today.

What you ask, in effect, is as to whether the county treasurer can permit a redemption of a part of property covered by a tax sale when the property has been struck off to the county and the certificate has not been sold. You refer to my former letter to you of November 16, 1914, on this subject, but I believe that that refers only to cases where the tax sale certificate is in the hands of an individual purchaser, and the reasons I gave for not permitting a redemption of a part of the property covered by such a certificate do not seem applicable where the sale has been to the county. In the same letter to you I said that a taxpayer might be allowed to pay on portions of his real estate if the property had been so assessed that the tax due on any one parcel could be computed and segregated from the total, and I see no reason why this might not be applied to the case of such tax sales, which were made to the county.

You further ask whether the treasurer should sell property for all delinquent taxes going back as far as same are delinquent, or whether he should sell only for the delinquent taxes of last year or should they be sold separately for each year. In the case of Crane v. Cox, which is reported in 18 N.M. beginning at page 377, the supreme court decided that under Section 34 of Chapter 84 of the Laws of 1913, sale should be made for taxes which were delinquent before that act became a law, the complaint having been made by the owner of property upon which there were due delinquent taxes from 1904 to 1912, inclusive. In other words, the court held that the act covered all taxes delinquent, no matter how far back they might be.

As to whether each piece of property should be sold for all the taxes delinquent upon it or whether it should be sold for each year separately upon which there are taxes delinquent, I am inclined to the opinion that under a bill which became a law at the last session of the legislature, which was Senate Substitute for House Bill No. 77, the notice of sale should set out opposite the name of each owner the total amount of the taxes delinquent upon his property. This act took effect immediately upon its approval, but I have not at hand the date of approval which must have been sometime in March. The collector should prepare his list and notice in accordance with this new act. I think, however, that it might be well to print in the list opposite each name, the years for which

taxes have been found to be delinquent so that it could not later be claimed that the county was precluded from advertising for sale the property of the same owner for taxes delinquent in other years than those {*114} which the collector may have found and included in the amount printed in the list.

You say that the treasurer has found about one hundred and fifty double assessments in the 1914 rolls and that you are unable to get an order of the court correcting them as you cannot tell which party is the true owner, and that you will not be able to get the data for this purpose before the time for the sale of delinquent property in June, and you ask whether property should be sold when it is assessed to two parties and if so, should it be sold as belonging to both. The sale will not take place in June, but the publication of the notice of sale, which must be for four consecutive weeks, must begin within forty-five days after the first day of June. I think that the idea which you suggest that the property might be sold as belonging to both persons is the only safe one if you are not able to get the corrections made by order of court before the advertisement begins, and I think there should be a statement in the list published that as to the names specified, it is a case of double assessment.