

Opinion No. 15-1607

July 31, 1915

BY: H. S. BOWMAN, Assistant Attorney General

TO: Mr. Barnet Faeilinger, Estancia, New Mexico.

Tax levies upon improvements located on public lands.

OPINION

{*181} Your letter of the 28th instant, making inquiry concerning the tax lien upon homestead property because of taxes levied upon the improvements thereon, has been received. levied, and that there is no legal objection to the taxation of improvements on public land, and in this connection we might say that it is very doubtful whether such taxes are a valid levy, as there is considerable authority to the effect that the improvements, being a part of the realty itself, and the land belonging to the United States, the improvements are not subject to taxation. Under such conditions, of course, no lien for taxes would attach, either to the improvements or to the land itself.

Proceeding, however, upon the theory that the taxes are properly levied, and that there is no legal objection to the taxation of improvements upon public land, we are of the opinion that the tax lien for delinquent taxes upon such improvements can, under no circumstances, attach to the land in the event that patent had not yet been issued at the time of the levy of the taxes. Even though we consider the improvements as personal property, the real property in this state is not subject to the tax lien for delinquent taxes levied upon personal property, and if we consider the improvements as real property the public domain is not subject to taxation by the state, and, therefore, a tax lien cannot attach to the land after the issuance of patent for taxes levied prior to the legal title vesting in the homesteader.

{*182} The removal of the improvements from the homestead cannot in any way alter the above holding, as there being no lien attaching to the land for delinquent taxes, the removal of any improvements therefrom would not affect the matter in any way.