

Opinion No. 15-1697

December 15, 1915

BY: FRANK W. CLANCY, Attorney General

TO: Mr. Chris Raithel, Treasurer and Collector, Luna County. Deming, New Mexico.

Redemption of property sold for taxes.

OPINION

{*267} I have today received your letter of the 15th inst. asking opinion upon Chapter 78 of the session Laws of 1915. You say that you have a taxpayer whose property has been sold to the county for the years 1905 to 1909, under the provisions of Chapter 22 of the Laws of 1899, and that under said Chapter 78, he claims that he has a right to redeem from those sales by paying to the county the amount for which it bought the property.

If those certificates of sale have not been sold by the county treasurer in conformity with the provisions of Chapter 134 of the Laws of 1905, or some amendment thereof, the taxpayer has the right to pay the amount of taxes for which the county bid in the property, to the county treasurer at any time prior to the first of next month, and thereupon the statute makes it the duty of the treasurer to issue a certificate of redemption of the property. Under this provision there can be no charge made in addition to the amount of taxes, whether for costs, penalties, interest or fees of any kind.

You further ask if you should waive the fees due the district attorney on these taxes, but you cannot have anything to do with the question of fees of the district attorney. If you will refer to the act of 1899, under which the sale was made you will see that even by that statute no payment of fees for the district attorney was required in order to effect a redemption from a sale of property for taxes. It is true that Chapter 134 of the Laws of 1905 refers to fees of district attorney, stating that they shall not be paid until the money has been realized, but any fees to the district attorney or commission to the assessor or treasurer, are not to be added to the amount of taxes, costs and interest, but must come out of the money collected. The fees to which you refer are to be found in Section 2590 of the compiled laws of 1897, where it is provided, among other things, that those officers shall receive "five per cent of the amount collected in any civil proceeding." It is not provided that the five per cent shall be in addition to the amount collected, but the effect of it is that the five per cent shall come out of the amount collected.