

## Opinion No. 16-1741

February 11, 1916

**BY:** FRANK W. CLANCY, Attorney General

**TO:** Honorable H. B. Hamilton, District Attorney, Carrizozo, New Mexico.

**Redemption of property sold for taxation within one year.**

### OPINION

{\*311} I have just received your letter of the 9th instant asking my opinion, in substance, as to whether property sold under an order of sale in suits for taxes, brought under the authority of Section 5509 of the codification, can be redeemed within a year, as provided in Section 2209, concerning property sold under execution.

{\*312} I have never had occasion to consider this before, and my first impression is that the sale made would be subject to the right of redemption as provided in section 2209, but I can see some ground upon which argument might be made that these tax suits are in a class by themselves, and that the general provisions of law applicable to ordinary suits, not having been recognized or referred to in the legislation about these cases, would not apply to them. It seems to have been considered necessary, as to a sale of real estate made under a decree of court upon foreclosure of a mortgage, specially to authorize a right of redemption, as you will see by reference to Section 4775 of the codification. On the other hand, it might be argued that the legislature contemplated sales in accordance with the general law about executions because it made an exception as to the necessity of any appraisalment, which is required before real estate can be sold under execution. The insertion of that proviso, which appears in section 5509, might be held to indicate that in other respects the sale would be in accordance with the law concerning executions.

There is sufficient doubt about this to make it advisable to get an early adjudication by the courts. In the case of which you write, the purchaser might bring mandamus to compel the issuance of the deed, and we could perhaps get the matter up to the supreme court within a short time. He ought not to be subjected to any avoidable expenses, and possibly you can so arrange that you can get it before the court without the necessity of his employing counsel. I see no impropriety in your drawing a petition for mandamus for him and having him sign it personally. You could then appear for the treasurer and make answer that the purchaser was not entitled to a deed until the expiration of a year within which the property might be redeemed. Upon this the district judge could make his decision, and an appeal could be taken to the supreme court. If you desired us to do so, this office would submit the matter with such argument as we could find on both sides.

It is, however, the fact that even if a deed were given to him by the treasurer or sheriff, if the owner has any right to redeem, he would still have that right, notwithstanding the execution of the deed.