

## Opinion No. 16-1865

September 8, 1916

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

**TO:** Hon. A. G. Whittier, State Traveling Auditor, Santa Fe, New Mexico.

**Redemption of property sold for taxes.**

### OPINION

{\*417} We have had in this office for sometime the letter addressed to you by the Treasurer of Taos County, on the subject of the assignment of certificates of tax sales where the property was struck off to the county prior to the enactment of Chapter 84 of the Laws of 1913, and of the issuance of deeds after such assignment.

The legislation on these subjects is not as clear and satisfactory as it ought to be and we have been compelled to take considerable time for the discussion and examination thereof in order to arrive at a correct conclusion.

The letter of the Treasurer shows that as to the particular certificate concerning which he was asking you, it was issued in Taos County by the Treasurer then in office, on March 23, 1906, and was recorded in the office of the county clerk on June 20, 1906. These proceedings were under the provisions of Chapter 22 of the laws of 1899, and were regular and proper. The law of 1899 and Chapter 134 of the Laws of 1905, were specifically repealed by the first section of Chapter 84 of the Laws of 1913, so that after the passage of the last mentioned statute, no guide is to be found in antecedent legislation where the property has been struck off to the county for want of bidders.

When we come to consider Chapter 84 of the Laws of 1913, we find in Section 35 thereof, authority for striking off to the county property upon which taxes have been levied when there is no bidder for the same, of which fact the collector is to make an entry on the assessment book. That section does not provide for the making of any certificate in such a case but the next section implies that there is to be a certificate made because it is made "the duty of the collector to sell and assign the duplicate certificate of such sale" to any person who will pay the full face value thereof, and if it cannot be sold at private sale before the regular sale for delinquent taxes in the next year, such certificate must be sold at public auction at the time of the delinquent tax sale, after publication of notice as required in that section. The second paragraph of Section 36 provides that after the sale of such certificates the owner must be notified of the sale, and that unless he redeem the property "within three years from the date of recording of said duplicate certificate, which, with the assignment thereof by the collector, must be recorded in the office of the county clerk", deed will be executed and delivered to said purchaser. This is the only place where there is any reference to the recording of the "duplicate certificate", whatever that may mean, and such recording

appears not to be required until the assignment has been made by the collector. The {\*418} statute then gives the owner three years from date of such recording within which he may redeem his property.

The language of this Section 36 is such that there might be some room for argument that it is entirely prospective in its operation and has no reference to former tax sale certificates, but if we should adopt this view, then all of the old tax sale certificates where the property had been struck off to the county, would be left entirely unprovided for and without any value whatever. As a matter of necessity, it would seem that we must hold these provisions applicable to the old tax sale certificates, and in those cases where they had been previously recorded, as required by the Law of 1899, they should be recorded again together with the assignment, after the collector has made a sale of such certificates, and then the three-year period of redemption would begin to run.

It seems that in the case presented to you, the tax sale certificate was assigned by the Treasurer and ex-officio collector on April 12, 1916, the assignment being recorded on April 15, 1916, and thereupon, deed being demanded, the treasurer executed a deed on said last mentioned date.

In this particular case the deed having been issued, there is no way that it can be recalled, and as to its validity and effect, no officer of the executive department can make any decision. If the property is of sufficient value the deed will probably be assailed in the courts and we can then have a judicial determination of what the law really is. I understand, however, that what you desire is to know the opinion of this office as a guide to future and other matters of the same kind and have, therefore, hereinbefore indicated what the law appears to us to be.

I return the Treasurer's letter to you herewith for your files.