

Opinion No. 17-1948

March 14, 1917

BY: MILTON J. HELMICK, Assistant Attorney General

TO: Hon. Robert P. Ervein, State Land Commissioner, Santa Fe, New Mexico.

Ambiguity Regarding Taxation of Lands Sold by State, in Chapter 52 Laws of 1917, Construed.

OPINION

Your office has today placed in our hands the engrossed amended House Bill No. 322, approved by the Governor on the 12th of March and filed with the Secretary of State on the same day. You request of us the construction of Section 3 of this act, calling our attention to the evident ambiguity of the wording thereof.

Section 3 of the engrossed bill reads as follows:

"All lands sold under the provisions of this Act, of for which existing contracts are changed in conformity herewith, shall be assessed for taxation at their full value, which shall in no case be more or less than that of similar lands of the same character issued under the provisions of this Act shall be required to pay the taxes lawfully due on such lands as provided in this section, and failure to pay such taxes shall work a forfeiture of the contract."

It is apparent that certain words have been omitted through an inadvertence in engrossing the bill because section 3 of the original bill reads as follows:

"All lands sold under the provisions of this act, or for which existing contracts are changed in conformity herewith, shall be assessed for taxation at their full value, which shall in no case be more nor less than that of similar lands of the same character **in the same locality. Purchasers holding contracts** issued under the provisions of this act shall be required to pay the taxes lawfully due on such lands provided in this section, and failure to pay such taxes shall work a forfeiture of the contract."

You will observe that the words in black-face type above are the omitted words.

It is rather a difficult matter for us to give you the construction of the act as it stands and the best we can do is to say what we think the courts of this state would hold to be the meaning of the section, basing such belief on the rules of construction adopted by other courts in the past.

In the first place it seems absolutely impossible that the omitted words can ever be read into the section by construction, but the section must stand as law as it reads in the

engrossed bill. The general rule is stated to be that where a statute is incomplete or defective, whether as a result of inadvertence or otherwise, it is beyond the province of the courts to supply omissions, even though as a result the statute is a nullity. This being the case we are forced to interpret the section by its actual contents.

You will observe that the section may be read from the beginning down to and including the word "character," without a break in the meaning. The section read thus far states a plain proposition and indicates a clear intent on the part of the legislature to provide that lands sold by the state on the deferred payment plan are to be taxed at their full value. This part of the section from the beginning to the point indicated reads as follows:

"All lands sold under the provisions of this Act, or for which existing contracts are changed in conformity herewith, shall be assessed for taxation at their full value, which shall in no case be more or less than that of similar lands of the same character."

In our opinion this portion of the act would be given effect by our courts and such a clear legislative pronouncement would not be disregarded merely because the remainder of the section may be meaningless. It may be presumed that the courts will disregard the remaining words of the section which are meaningless. While, as a general rule, every word in a statute is to be given force and effect, yet, whenever a statute contains words to which no meaning at all can be attached, or at least no meaning in harmony with legislative intent as collected from the entire act, such words may be treated as surplusage and will be wholly disregarded in the construction of the act. Such is the rule supported by the weight of authority in this country. Under this rule it would seem that our courts would disregard the remaining words of section 3, beginning with the word "issued." But it should be noted that the last clause of the section following the last comma, which reads as follows:

"and failure to pay such taxes shall work a forfeiture of the contract,"

is a complete provision and might also be given effect by the courts. But the clause beginning with the word "issued" is a mere meaningless collection of words which does not seem to refer to any other words or portions of the section and, consequently, will, we think, be disregarded.

In view of the foregoing it is our opinion that the contents of section 3 from the beginning down to and including the word "character" is effective and that possibly the last clause of the section, being also the last line of the section, may also be effective, although as to this we express no opinion. As a further justification of this opinion it may be noted that if this section is to be construed as we herein indicate, the intention of the legislature as disclosed in the original act will practically be carried out and virtually the same effect will be given to the act as if the missing words had not been omitted.