

## Opinion No. 20-2674

August 30, 1920

**BY:** HARRY S. BOWMAN, Assistant Attorney General

**TO:** Mr. Oscar B. Wood, Treasurer and Collector, Las Cruces, New Mexico.

Refunds of Payments for Void Tax Certificates.

### OPINION

We are in receipt of your letter of the 24th instant enclosing one from the Glen Investment Company of Denver, Colorado, in regard to the passing of a blanket resolution by the Board of County Commissioners authorizing the refund by the Treasurer of amounts paid by purchasers for void or invalid tax certificates, and in reply would advise you as follows:

The provisions authorizing the refund of moneys paid for void tax certificates are contained in Section 5499, Code of 1915.

You will note that the only refunds authorized are those which arise by reason of a sale of real estate because of a mistake or wrongful act of the Treasurer, Clerk, Assessor, or from a double assessment, and it has been held by the Territorial Supreme Court that no other reason will justify a refund of moneys paid for tax sale certificates.

Blackwell vs. Bank of Albuquerque, 10 N.M. 555, 63 Pac. 63; Stewart vs. Bernalillo County, 12 N.M. 79.

The section above mentioned does not distinctly authorize the Board of County Commissioners to order the refund, but as the county is required to refund the money, this becomes a part of the business of the County Commissioners, who are the representatives of the County and charged with looking after the County business in all cases where no definite, specific provision is made by law. The presentation of a claim by a purchaser at a tax sale for the refunding to him of the money which he has paid, appears to be like any other claim against the County and may be allowed and ordered paid by the County Commissioners, and if the Board of County Commissioners sees fit to pass a blanket resolution authorizing the Treasurer to make such refunds at any time when a claim is presented to the Board, it is possible that there would be no objection to such procedure. It would seem preferable, however, to have each claim or series of claims presented separately to the Board, and have the Board pass upon them as presented, as in this manner the objection that the Board of County Commissioners was attempting to delegate its judicial functions to the County Treasurer in determining what claims should be paid, would be obviated.

We are returning to you herewith the letter of the Glen Investment Company which accompanied your letter above mentioned.