

Opinion No. 21-2944

April 30, 1921

BY: A. M. EDWARDS, Assistant Attorney General

TO: Mr. J. E. Saint, Chief Tax Commissioner, State Tax Commission, Santa Fe, New Mexico.

Suit for Taxes Upon Property Previously Bought In By the County.

OPINION

{*52} In your letter of April 26th, you ask whether it would be legal for a special attorney for the Tax Commission to bring personal suit for delinquent taxes where the county has already bought in under tax sale certificate the property upon which the taxes are delinquent.

It seems to have been generally held by the courts that where a tax sale certificate has been bought in by the county at a tax sale, the lien of the delinquent taxes for the years for which the tax sale certificate was issued, is, to a certain extent discharged. Under the laws heretofore in force in this state the county obtains, by the issuance of a tax sale certificate, an equitable lien upon the property for which the certificate was issued. This lien could only be discharged by the payment of the back taxes due or, as it is commonly called, the redemption of the property. Under such procedure the county has followed the statutory method for enforcing the collection of taxes and has sold the property under its lien for taxes.

It would therefore not be legal for the taxing authorities again to bring suit to take new steps to collect such taxes.

Where tax sale certificates have been issued to, and are still held by any county, and there is any question as to the validity of such certificates, the district attorney or the special counsel for the Tax Commission may bring suit to determine the validity of such certificates. This may be done under section 4 of Chapter 102 of the Laws 1919 which seems not to have been repealed by the revenue code.

In counties where heretofore tax sale certificates have been issued to the county and the taxpayer seems to pay no attention to the sale and this method of collection is apparently ineffective, it might be advisable, if any defect is found in the proceedings leading up to the sale, to have the action brought provided for in said section 4. In such suit any number of tax sale certificates held by the county may be included. This method might, in some instances clear the way for a new and more effective suit to be brought against the delinquent taxpayer and his property.

Where sales have been made to the county and no tax sale certificate issued, it might be advisable to have the tax rolls cleared and these sales cancelled of record under the provisions of section 4 of Chapter 102 of the Laws of 1919.