

Opinion No. 26-3884

May 4, 1926

BY: ROBERT C. DOW, Assistant Attorney General

TO: Hon. J. E. Owens, Chief Tax Commissioner, Santa Fe, New Mexico.

I am in receipt of your letter requesting an opinion relative to certain matters pertaining to the collection of delinquent taxes; I shall proceed to answer your questions in their regular order as outlined in your letter as follows:

1. Are special tax collectors authorized to proceed with the collection of taxes where tax sales certificates were issued during the year 1922, said certificates not having been recorded until the year 1925?
2. Are special tax collectors authorized to collect taxes for the year 1923 where no sale was allowed and no certificates issued?
3. Should advertisement be made before a tax deed can be issued on property delinquent for the year 1921?
4. Where state and county taxes have been paid on lands and the tax payer has refused to pay, or left unpaid, water or drainage taxes assessed on the same lands, would a tax deed, based upon a tax sale certificate issued upon non-payment of said water or drainage tax, be valid?
5. Does Chapter 27 of the Laws of 1925 alter or change the period of redemption given to the owner of lands under prior tax laws of New Mexico?

Answering your first question, you are advised that Chapter 26 of the Laws of 1925 provides for the appointment of special tax collectors, and this law authorizes and directs such special tax collectors to institute and prosecute suits for the collection of all delinquent taxes appearing on the tax rolls and which were levied or assessed prior to the year 1924. Under this law the duty of the special tax collector is plain; it is his duty to collect all delinquent taxes which were levied or assessed prior to the year 1924, and it would make no material difference when the tax sale certificate issued or when it was recorded; the foregoing will also answer question No. 2 relative to delinquent taxes for the year 1923 where no certificates have been issued.

In this connection, I also desire to call your attention to § 6 of Chapter 26 of the Laws of 1925. This section provides that the collector or attorney may bring suit to determine the validity of any tax sale certificate still held by any county, with the further provision that if the certificate is held invalid it should be cancelled and the delinquent taxes for which the same was issued shall be collected as if the property had not been offered for sale

and a certificate issued therefor. But if said certificates are adjudged valid, then the same should be sold by the county treasurer as provided by law.

Answering question No. 3, I am of the opinion that the advertisement or notice required by § 453 of Chapter 133 of the Laws of 1921 must necessarily be given before a deed can issue on property delinquent for the year 1921; this equally applies to all property where a tax sale has been made between the date of the passage of the foregoing law in 1921 and the date of the passage of Chapter 102 of the Laws of 1925; § 453 of Chapter 133 of the Laws of 1921 provided in substance that before any tax deed shall issue under this law, the person applying therefor, at his own expense, shall serve, by registered mail, return receipt requested, a notice upon every person in actual possession or occupancy of such land, and upon the record owner or owners thereof, and upon all record mortgagees and lien holders thereof, at their last known address reciting that the applicant will apply to the county treasurer for a tax deed of said premises (describing the premises), within not less than thirty days from date of service, on account of the tax sale of said property, giving the date and year of sale; this statute provides for further notice in case there is no one in actual possession or occupation of the land, and further provides that the applicant shall prove the service of said notice by affidavit as a condition precedent to the right to a tax deed.

It is true that § 28 of Chapter 102 of the Laws of 1925 specifically repeals § 453 aforesaid, but the 1925 law is not retroactive for the reason that the owner of land cannot be deprived of his right to this notice provided the right existed at the time of the sale of the land; his right of redemption cannot be made more onerous after the sale has taken place, and the legislature cannot take this right away from him for the reason that it would be an unconstitutional interference with a vested right. The law on this point is clearly set forth in 20 R. C. L. Sec. 390, and in the case of *Johnston v. Taylor*, 88 Pac. 903.

In answer to question 4, I am of the opinion that lands may be sold for nonpayment of drainage and water taxes when said taxes have been properly levied, assessed and entered upon the tax rolls in accordance with law; § 1923, New Mexico Code, 1915, provides that drainage taxes shall be collected in the same manner in which state and county taxes are collected; Chapter 20 of the Laws of 1919 provides for the assessment of taxes on lands for construction charges, maintenance and other purposes, and § 25 of said Act provides that the revenue laws of the state for the assessment, levying and collection of taxes on real estate shall be applicable for the purposes of this Act, including the enforcement of penalties and forfeitures for delinquent taxes. This similar provision is also found in the irrigation laws of Chapter 41 of the Laws of 1919, and Chapter 54 of the Laws of 1923.

While under the law it is permissible to allow the tax payer to pay state and county taxes without paying water or drainage tax the county treasurer is not authorized to give a tax receipt until the latter assessments have also been paid. All that could be required of him would be a memorandum receipt showing the payment of a part of the taxes (Opinion of Attorney General, No. 3015).

§ 7 of Chapter 26, Laws of 1925, provides an additional remedy for the collection of taxes upon property where tax sale certificates have issued, and the county has not been able to realize the full value of the taxes for said certificates; this law provides that the special collector may file a petition in the district court, and upon hearing, if the court is satisfied that the public interest requires that said property shall be sold for a sum less than the total amount, then said property may be sold under decree of the court; this law further provides that the treasurer shall execute a deed to the purchaser and that such deed shall convey to such purchaser a fee simple title to said property free from any lien for such delinquent taxes, but subject to any unpaid taxes levied and assessed after the year 1923.

There seems to be some difference of opinion as to whether or not the owner of property can be deprived of his right to redeem at any time within three years from the date of a tax sale; this is the law unless the same is changed or altered by virtue of the above section of our statute, which provides an additional remedy, as aforesaid. While this is a close question, it does not seem to be definitely determined in this state, I am of the opinion that the purchaser of property sold pursuant to the foregoing section takes a clear title to the property, and that the owner thereof is thereby deprived of his three years right of redemption; as stated, there is good authority to the contrary. See R. C. L. Sec. 390, *Johnston v. Taylor*, 88 Pac. 903.

I have found only one decision in New Mexico bearing on the question, and it is held in *Glasgow v. Peyton*, 22 N.M. 97, wherein the court construed a similar statute; the court held in this case that this similar statute furnished a remedy by judicial proceeding in which the lien of the state may be established by decree of the court, thereby establishing beyond question the validity of the lien, and giving to the purchaser at the sale a perfect title as against the delinquent tax payer; in view of this authority and the wording of the statute, I am of the opinion that the owner of said property could not redeem after a deed has been delivered to the purchaser at the judicial sale.