

Opinion No. 26-3911

August 31, 1926

BY: ROBERT C. DOW, Assistant Attorney General

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

This Office is in receipt of your letter requesting an opinion relative to the period of redemption given the owner of real estate when such owner is proceeded against for the collection of taxes on said real estate pursuant to Chapter 26 of the Laws of 1925 relating to special tax collectors.

Chapter 26 of the Laws of 1925 provides for the appointment of special tax collectors, giving such appointees "authority to bring and prosecute suits, actions and proceedings in the name of the state or county, and to distrain and sell personal property, for the collection of delinquent taxes." Said chapter also provides that "except as herein otherwise provided, the procedure in any suit brought under the provisions of this act, including summons, personal and by publication, shall be as provided by law in civil actions."

§ 6 of said Act provides for bringing a suit to determine the validity of any tax sale certificate, and § 7 of said Act provides in substance that when property has been sold to the county and the full amount of the delinquent taxes assessed against said property cannot be realized thereon by the county, then a suit may be brought by a special collector, and judgment rendered authorizing such property to be sold for a less amount.

The last two remedies mentioned are clearly set forth in the statute. As to whether or not the special collector may bring a suit at law and obtain personal judgment against the tax payer, and levy execution upon and sell real estate is not clear in this chapter of the law. However, as read in connection with § 448, Chapter 133 of the Laws of 1921, I am of the opinion that the additional remedy afforded the tax collector is broad enough to cover the filing of such suits.

Your question is what, if any, right of redemption does the owner of property have, first, when personal judgment is obtained for taxes due and property is levied on under execution; second, when property is sold for less than the amount due under § 7 aforesaid.

In the case of *Glasgow v. Peyton*, 22 N.M. 97, referring to § 5509 of the New Mexico Code, the court said:

"This section furnished a remedy, by judicial proceedings, in which the lien of the state may be established by decree of a court of competent jurisdiction, 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."

While § 5509 of the Code has been repealed, § 448, Chapter 133, Laws of 1921, is almost similar to said section. The quotation from the decision in the above case would seem to indicate that when a suit is filed on a statute affording an additional remedy for the collection of taxes, that all right of redemption afforded the tax payer is lost, however, the question of right of redemption was not directly raised in this case. Where suit is brought in either one of the foregoing instances and the lien foreclosed or property is sold under execution, under the above ruling I would say that the three year right of redemption is taken away from the tax payer, but there still remains the question of the right of redemption from sales of real estate under execution, or judicial sales. § 2209, New Mexico Code, gives a period of one year to redeem from sales under execution where property is sold subject to liens and encumbrances. § 4775 of the Code, which might possibly supercede said section, gives a period of nine months to redeem from sales of real estate sold under order, judgment or decree of the court, and a mortgager, his assigns, or any party interested therein, may redeem in said time. After the passage of the above act, the case of Abo Land Co. v. Tenorio, 26 N.M. 258 was decided, and it was held that under execution sale the owner had one year within which to redeem. The question as to whether or not the latter statute supercede the former statute and thereby only gave the owner a period of nine months within which to redeem was not passed upon in this case. While I am inclined to believe that such statute was supercede by the latter statute, the fact that the court held in this case that such owner had one year within which to redeem, I think we should go upon the assumption that the opinion in that case is binding, at least, until the direct question is raised in the Supreme Court.

From the foregoing. I am, therefore, of the opinion that when property is sold for less than the amount due, and the lien foreclosed and property sold under execution pursuant to a personal judgment, that the owner of said property has one year within which to redeem from such sales.