

Opinion No. [29-107]

November 13, 1929

TO: Office of the Attorney General of New Mexico

TAXATION -- Redemption (under § 8, Ch. 114, Laws of 1929) of part of property described in a tax lien certificate.

OPINION

Reference is made to yours of the 6th inst. in which you request an opinion from this office as to whether a person having a legal or an equitable interest in only a part of property described in a tax lien certificate may, under the provisions of section 8, chapter 114 of the Laws of 1929, redeem that property without tendering the full face value of the certificate upon which such property appears.

The question you propound is a practical one and somewhat puzzling in view of the wording of the section of statute to which reference is made. In seeking an answer to the question it may be helpful to consider other steps and requirements of the procedure in taxation antedating the issuing of the tax lien certificate.

First we note that the lien for taxes is not created by the issuing of a certificate nor by delinquency in the payment of taxes but exists from the beginning of the year in which the levy is made as provided by section 413, chapter 133, Laws of 1921.

"All taxes levied upon real estate shall be a lien thereon from the first day of January of the year in which the levy is made and continue as such until paid or foreclosed by sale."

From the language just quoted as well as in keeping with rules generally enforced, the taxes assessed upon a particular parcel or tract of land are a lien upon that particular tract alone and not upon other parcels of real estate even though belonging to the same owner and situated in the same county.

The existence of a tax lien certificate presupposes a compliance with all the requirements as to the making of returns, the assessment and the extending of taxes on the rolls prior to their delivery to the treasurer. It is the duty of the owner or agent listing property for taxation in describing real estate to give a description "such as would be sufficient in a deed to identify it so that title thereto would pass." (Sec. 6, Ch. 102, Laws of 1925) In case of failure on the part of the owner to make return, it is the duty of the assessor to enter the property as definitely as his knowledge and diligence will permit. Each separate lot or parcel of real estate so listed is extended on the tax roll independently and if taxes are not paid and it eventually becomes the duty of the special tax collector to issue a tax lien certificate, each such certificate should include and describe but one lot or parcel of real estate.

We note also that at least prior to the merging of delinquent taxes in tax lien certificates there is a provision for the payment of taxes due on any part of the property taxes when the value of such part can be definitely ascertained from the tax roll. The provision is contained in Section 411, Chapter 133, Laws of 1921.

"The County Treasurer shall make proper entries on the tax roll opposite the entry of the assessment and upon the cash book of all payments of taxes. Any person from whom taxes are payable may pay the taxes due on any part of the property taxed, without paying on the whole, when the face value of the part can be definitely ascertained from the tax roll."

Section 8, Chapter 114, Laws of 1929 is as follows:

"The owner of, or any person having a legal or equitable interest in, the property described in any certificate of lien, may have such certificate released at any time prior to the sale of such property by paying to the County Treasurer of the county to which such certificate was issued, the amount of the face value thereof plus accrued interest to the date of such payment. The treasurer, upon request of such payment, shall write or stamp across the face of the original and duplicate certificate the words, "Released this ___ day of ___ 19___. Receipt No. ___," filling in the blanks with the proper date and the number of the receipt issued as evidence of the payment, and thereupon such certificate shall become and be null and void and the lien discharged. If such certificate has been sold and assigned prior to such payment, the County Treasurer shall notify the assignee thereof, at his last known address, of the fact of such payment and release and that the money so paid is held subject to his order upon surrender of the duplicate certificate."

As above suggested, and in order that taxes which may be delinquent on one lot or parcel of real estate be not certified as a lien on real estate other than that upon which such taxes were assessed, the certificate should contain the description of but one lot or parcel of real estate and correspond in that respect with the return made by the owner, or by the assessor as the case may be. In such case the treasurer will usually be able to definitely ascertain from the face of the certificate the amount to be received by him, that is, "the amount of the face value thereof plus accrued interest to the date of such payment," before he shall release the lien.

The statute makes no specific provision for the release of a part only of the real estate therein described. Considering, however, the purpose of the tax lien certificate to be that of evidencing the preexisting lien described therein and securing the obligation of the taxes levied on the particular real estate therein described, including penalties, interest and costs and in the case of a certificate which does describe more than one lot or parcel of real estate, I can see no objection to treasurers, in cases which admit of such action and in which entries have been made in such way that the value of a part only of the real estate therein described can be definitely ascertained, segregating such part, accepting payment on the face value of the certificate as pertaining thereto and releasing such part from the lien prior to foreclosure and sale.

The last preceding sentence may be somewhat involved. I have endeavored to limit it in its application to cases in which the specific property sought to be released and the taxes, interest, penalties and costs thereon can be definitely ascertained. Perhaps we should go farther and limit this also to cases in which the tax lien certificate has not been assigned and remains the property of the county. In the case of an assigned certificate, I do not deem it advisable for a treasurer to assume to segregate any part of the real estate therein described without the written assent of the assignee or by court order. It probably would be better for treasurers to refuse, in such cases, to accept less than the face value of the certificate. The result of this would probably be that before long someone desiring a release of a part only of the property described would start a mandamus proceeding, which might be conducted as a friendly suit through the Supreme Court, in order that an authoritative and binding opinion might be obtained.