

## Opinion No. [30-106]

October 1, 1930

**TO:** Office of the Attorney General of New Mexico

TAXATION -- Nature of title conveyed by tax deed. § 141-714, Code 1929.

### OPINION

I have yours of the 29th inst. in which you direct attention to that part of section 141-714 pertaining to the title conveyed by a treasurer's deed as provided for in the second paragraph of the section, the words quoted being the following:

"Report of said sale shall be made to the Court, and upon confirmation thereof the County Treasurer as such trustee shall execute and deliver to the purchaser a deed to the property so sold, which shall vest in such purchaser a title in fee simple absolute free and clear from all encumbrances and of the same effect as any title emanating from the state."

You say it has been suggested that the latter clause of this provision has the effect of reserving the mineral rights to property sold at a tax sale and you ask for our opinion relative thereto.

As we read this section in connection with the whole act of which it is a part we note that it has reference to the sale of property previously purchased by the county under foreclosure of a tax lien certificate at which foreclosure sale the deed had been taken in the name of a county treasurer as trustee for the state, county, municipality, or district having interest in the taxes secured by such property and which deed vested in the treasurer as trustee complete and absolute legal title with the right of immediate possession and control.

Such title having vested in the treasurer as trustee the State Tax Commission is permitted to file a petition in the district court for the county in which the property is situated asking for an order of the court authorizing and directing a sale of such property. In this procedure the county treasurer is made respondent. Upon the making of such an order by the court the State Tax Commission is to sell the property at public or private sale as the court may direct and report back to the court. Upon confirmation of the sale it becomes the duty of the county treasurer as trustee to execute and deliver to the purchaser a deed to the property. The language above quoted contains the legislative provision as to the title acquired by the purchaser at such a sale. The delinquent taxes upon which the tax sale certificate was issued constituted a lien against such property in favor of the state and superior to any other lien or encumbrance. The foreclosure suit foreclosed all holders of inferior liens or encumbrances and it appears that all that the legislature intended by the provisions in the portion of the statute quoted was to assure the purchaser that he was by his

purchase acquiring absolute title in fee simple free and clear from all former grants, liens or encumbrances. That is, such title as he would acquire by purchasing from the source of title, the state itself. We are of the opinion that the deed conveys to the purchaser unconditional title and without any reservation at least in all cases in which the title held by the former owner was free from reservation. As to that, even if a former owner held title from the state itself with reservation of minerals in the state the purchase by the state at the foreclosure sale would merge all titles again in the state and it appears that by the provision of this statute the purchaser at the second sale, that is, the sale provided for in section 141-714, is a purchaser from the state and the deed issued is in effect a deed from the state without reservation.