

Opinion No. 31-132

April 18, 1931

BY: E. K. Neumann, Attorney General

TO: Mr. C. T. Watkins, County Treasurer, Union Co., Clayton, New Mexico.

{*63} In your letter of April 14, 1931, you present a situation which requires an answer to the following general question:

May one interested in property covered by one tax sale certificate redeem a portion of said property without redeeming the whole of it?

In my opinion the answer to this question depends largely upon the manner in which the property was assessed. The general law is stated in 37 Cyc. 1409 as follows:

"Where a tract of land was **divided into parcels** for the purpose of assessment and sale, the owner of any one parcel may redeem it by paying the price which it brought; but in the absence of a statute the owner of an undivided interest in a tract, or of a separate portion of a tract which was assessed and sold **as an entirety**, {*64} cannot redeem his part or interest by payment of a proportionate part of the entire amount, but must redeem the whole."

The following is an illustration of how the rule above stated would apply. If a tract of eighty acres was assessed as NW 1/4 NW 1/4 [at] \$ 800.00 and NE 1/4 NW 1/4 [at] \$ 750.00, the tax upon the first forty being \$ 4.00 and upon the second forty being \$ 3.85, each forty might be redeemed separately, even though both tracts are sold together and included in one tax sale certificate.

Section 141-207 of the 1929 Compilation requires that, "Each tract of land shall be valued and assessed separately."

Justice Cole in the case of Penn. vs. Clemans, 19 Iowa 372 at page 379 says:

"And, finally, it is a well settled rule, and one which has been frequently recognized by this court, that, even in execution sales (where the rule would not be as strictly applied as in tax sales), a sale of several distinct subdivisions or parcels of land in gross, is irregular and will not be upheld. (citing cases). This rule has been recognized and enforced in very many cases of tax sales. (citing cases).

"In this case there was a palpable violation of this well settled rule. This officer sold not only that which was assessed in two distinct assessments, but which really embraced six distinct governmental subdivisions of this identical land. The purchaser stands charged, most undeniably, with knowledge of this wrongful act, and to permit either the officer or purchaser to take advantage of this wrong on their part, to defeat the right of

redemption, would be to override that well settled rule of law and common justice, that no man shall take advantage of his own wrong."

On the other hand, if a tract of land is assessed as an **entirety**, having been sold for taxes and one tax sale certificate issued covering the entire tract, the owner of a portion thereof, cannot redeem it without redeeming the entire tract. For instance, if the eighty acres above referred to had been assessed as the N 1/2 NW 1/4 [at] \$ 1550.00, the taxes upon the same being \$ 7.85, and it had been sold for taxes, one tax sale certificate being issued upon the entire tract, the owner of one forty could not redeem it without redeeming the entire eighty acres.

This view of the law is supported by the opinion of the court in Moulton v. Doran et al., 10 Minn. 67, at page 70:

"The block having been originally assessed as a single tract, the County Treasurer had no authority to sell in lots. It was his duty to sell in the sub-divisions in which the property was assessed. He was not presumed to know or bound to enquire whether the block was subdivided into lots. The act under which the sale was made, required that the premises should be sold for an amount not less than that for which they might have been redeemed, and inasmuch as the lots had not been assessed separately, it was not possible for him to ascertain the sum for which any single lot should be sold. There is no presumption either of law or fact, that the several lots in a block are equal in value. It is true that the law required that each tract or parcel be separately sold, but this when read by the light of other provisions of the same act, can only be held to mean that each parcel, **as assessed**, shall be sold separately."

To the same effect is State v. Schaack, 28 Minn. 358.

In the case you mention in your letter, if the one hundred lots were assessed separately and the amount of tax determined upon a separate valuation of each lot, there would seem to be no question in my mind that each lot might be redeemed separately, regardless of the fact that they were sold together and one tax sale certificate issued covering all. If they were assessed as entire blocks and each block valued for assessment purposes as an entire block, then the owner of any one block might redeem it without redeeming the remainder.

Of course, the proper procedure in selling real estate for taxes is to sell each tract, separately assessed and valued, as a single tract, and to issue a single tax sale certificate {*65} for each tract thus assessed and valued.

I trust that the above answers your question clearly. Your other inquiry will be answered in a separate letter.

A copy of this opinion is being sent to the State Tax Commission.

By: Quincy D. Adams,

Asst. Attorney General