

Opinion No. 33-590

April 28, 1933

BY: E. K. NEUMANN, Attorney General

TO: State Tax Commission, Santa Fe, New Mexico.

{*43} Your file, containing letters from many County Treasurers relative to Senate Bill 144, relating to Delinquent Tax Collections, is received and we will attempt to answer the many questions therein contained. These answers are based upon our construction of said act.

{*44} A matter which is causing some controversy, especially has it been fertile material for newspaper stories, is a construction of Section 8 of said Act. Many people are pleased to construe said section to mean that the tax sale certificates issued at the tax sale, as provided in this act, is an instrument which will dispossess the delinquent taxpayer of the property sold for taxes, immediately vesting in the purchaser the right of possession to said property. While we admit that said section is not entirely insusceptible to such construction, we feel that such construction is not correct. Said Section is as follows:

"The tax sale certificate shall vest in the purchaser, his heirs, successors and assigns, or the State and its successors and assigns, as the case may be, the right to a complete legal title to the property described therein, subject to redemption as provided by law. The State shall be deemed to be a purchaser within the meaning of this act."

It is our opinion that the words "shall vest the right to a complete legal title" are intended to mean that the certificate shall vest in the purchaser, his heirs, etc., the right to a tax deed two years after the date of the certificate, provided, the owner does not redeem the property as provided by law. The certificate, in other words, vests a right to a tax deed under certain conditions which tax deed is the complete legal title and that it gives no other right. Other sections of the act, including Section 28, can be construed, without a "forced construction," in entire harmony with our construction of said Section 8.

The question asked by the various treasurers have been noted and are as follows, with our opinion following each question.

Q. Are the 1932 taxes included in those delinquent for which property shall be sold on June 12, 1933?

A. Yes. Section 33 of said Act.

Q. If the property at the tax sale shall bring more than the taxes shall the amount for which it is sold show in the tax sale certificate?

A. Yes. Clearly so under Section 6.

Q. Under said Act shall distraint warrants be issued as heretofore?

A. Yes. See Section 42 of said Act.

Q. Are delinquent taxes for 1930 and prior years to be handled by the Delinquent Tax Attorneys and Collectors?

A. Yes. See Section 33. Although the Act abolishes the office of delinquent tax collector (Sec. 41) such abolishment can have reference only to the method of collection prescribed in the Act for 1931 and subsequent years.

Q. Shall penalties and interest be figured on delinquent taxes in full at time sale is to be made?

A. Yes, but under Section 34, if taxes are paid prior to actual sale, or afterward, if sale is made to State, the taxpayer may take advantage of Senate Bill 241.

Q. How are the expenses of the tax sale to be paid?

A. This is a question that could be answered as follows: "In any way legally possible," but we feel that the expenses are to be made only out of supply and postage funds, which budget amounts can be augmented by surplus moneys in other funds, other than sinking, interest and special funds, which funds can be repaid out of the 4% fund realized after sale is made. If there is **no money** a problem, which is not a legal problem, is presented and we cannot answer it.

Q. Will it be necessary to notify, by registered mail, all delinquents both before and after sale?

A. Yes. Section 15 and Section 36 of said Act.

Q. Is there any conflict between Senate Bill 241 and Senate Bill 144?

{*45} A. We can see none, for all that Senate Bill 241 gives to a taxpayer is the privilege of paying his taxes without penalty and interest, or with a graduated interest, if same are paid within a certain time or if, within that time, the state still has the lien for such penalties and interest. Said act is not a moratorium act nor one which discharges any moneys due the state, but simply an act which, if taxes are paid thereunder, permits the state to discharge its lien for penalty and interest.

Q. Who supplies the forms necessary for tax sales certificates and deeds?

A. The statute prescribes the form, but each county must supply itself. It is suggested that a uniform form be approved by the tax commission and such form adopted in all counties.

Q. How shall the sales be advertised, by a naming of the persons and a description of the parties or otherwise?

A. Follow the form prescribed in Section 2.

Q. Shall personal property taxes be segregated from real property taxes before sale of real property for delinquent taxes and the property sold only for the latter taxes?

A. Yes, the collection of delinquent personal property taxes are not contemplated in said Act, but are to be collected as they now are under present laws relating thereto.

Trusting the above information will be of some benefit to you as a guide, we are