

Opinion No. 35-1038

May 16, 1935

BY: FRANK H. PATTON, Attorney General

TO: Hon. J. D. Graham, Jr., Treasurer and Collector, Reserve, New Mexico.

{*68} This is in reply to your letter of May 13, 1935, in which you ask several questions.

You wish to know whether the holder of a tax sale certificate, issued under the provisions of Chapter 171, Laws of 1933, can benefit by the provisions of Chapter 133, Laws of 1935, with reference to waiving interests and penalties. Under Section 8 of Chapter 171, Laws of 1933, the purchaser of a tax sale certificate is given "the right to a complete legal title to the property." He is liable to be reimbursed for all prior or subsequent taxes paid by him. Having the right to pay taxes on the property, I see no reason why he should not benefit by the provisions of Chapter 133, Laws of 1935, unless he is prohibited by the language of the act itself. {*69} There is nothing in Section 1 of said Chapter 133 which would, in my opinion, prevent the holder of such a tax sale certificate from benefiting thereby. Section 2 of said act refers to the paying of taxes upon property owned by such person or taxpayer." I think, however, that this language should be construed liberally so as to include persons who have an equitable interest in the property, or who by operation of law have the right to pay taxes thereon. Consequently, I think your first question should be answered in the affirmative.

Your second question relates to the payment of taxes by a check which has been dishonored for some reason by the drawee bank. Payment of taxes by check is only conditional upon the check itself being paid, and if the check is not paid the taxes remain a charge against the land. 61 C.J. 964. In such cases I think you should notify the taxpayer that his receipt has been voided, and change your records to show that such taxes are delinquent. I would advise that in the future where taxes are paid by check, that the receipt be not issued until the check has cleared. In that way you will avoid confusion and trouble.

As to your third question, bonds callable at an optional date should be called in the manner prescribed by the statute authorizing their issue, or by the terms of the bonds themselves. If no such method is prescribed, I would suggest that notice be mailed to the bond holders and published in a paper of general circulation in the county. In this particular case I will not attempt to advise you exactly what you should do since I am not familiar with all of the facts involved. You should take the matter up with the district attorney and follow his advice.

By QUINCY D. ADAMS,

Asst. Atty. General