

Opinion No. 39-3050

March 10, 1939

BY: FILO M. SEDILLO, Attorney General

TO: Mr. B. F. Archer, Treasurer, Dona Ana County, Las Cruces, New Mexico.

{*23} We have your letter of March 8 stating that a tax sale certificate for the year 1936 was issued on December 9, 1937, to one party, and another tax sale certificate was issued on July 1, 1938, for 1935 taxes to another party, and that on December 9, 1938, the former deposited with you the money necessary to redeem from the 1935 certificate last above mentioned. You also state that the money has been refused by the owner of the 1935 certificate, and that he is now demanding a deed on his 1935 certificate.

Section 14, Chapter 27, Laws of 1934 (141-741, 1938 Supplement) provides that property sold under tax sale certificate may be redeemed by any person "having a legal {*24} or equitable right therein." Under this provision, it is my opinion that a person holding a tax sale certificate has such a right as would entitle him to redeem, and that the 1935 certificate having been redeemed, the holder of that redeemed certificate is not entitled to a deed. In any event, having recognized the right of the holder of the 1936 certificate to redeem, the proper procedure for you to follow now is to hold the redemption money for the holder of the 1935 certificate and let him present a test suit to determine the right of the 1936 certificate holder to redeem. If the 1935 certificate holder refuses the money you merely hold it in the fund until the court determines the rights of the respective parties.

I trust that the above will be of assistance to you.

I am enclosing a copy of this opinion to your District Attorney for his information, and if he does not agree with us I will appreciate hearing from you further.

By: A. M. FERNANDEZ,

Asst. Atty. Gen.