

Opinion No. 39-3211

July 15, 1939

BY: FILIO M. SEDILLO, Attorney General

TO: Hon. John E. Miles, Governor of New Mexico, Santa Fe, New Mexico.

{*82} In connection with the effort being made to assist the Rio Grande Conservancy District farmers, I have, at your request, attempted to determine the exact extent of the State Tax Commission's authority in the matter of the proposed repurchase of lands now held by the state under tax deed.

The Moratorium Act, Chapter 207, Laws of 1939, makes provision for payment of delinquent taxes and the redemption of tax sale certificates, and permits the remission of interest and penalty on all payments made prior to October 1st, and not thereafter. It has no reference whatever to lands on which redemption has expired and deed issued to the state. As originally drawn, it would have one paragraph authorizing the immediate reconveyance of such lands to the original owner by the payment of the principal without interest or penalty prior to October 1st, but this provision was stricken out by the Legislature, and, therefore, this Act is wholly inapplicable in so far as lands already deeded to the state are concerned.

However, there was another statute passed by the last Legislature specifically dealing with properties on which the redemption period has expired and deed issued to the state. That Act is Chapter 203, Laws of 1939, and the provisions pertinent to the particular matter here in question are contained in Sections 3, 4 and 5 of the Act.

Section 3 provides that, "The State Tax Commission shall have **full power and authority to sell** either for cash or by contract, any property acquired by the state by tax deed."

Section 4 provides that, "The person whose title to property has been extinguished by the issuance of a tax deed to the state shall have the first and prior right to repurchase such property" ___ and "shall not be required to pay more than the amount of delinquent taxes, penalties, interests and costs accrued against the property sought to be so repurchased." ___ "In any case in which the accumulated taxes, penalties and interest against such property are, by the person making application for repurchase, asserted to be in excess of the value of the property, the State Tax Commission shall cause the property to be appraised, and if the appraised value is less than the amount of taxes, penalties and interest, the person applying for repurchase under this section may repurchase for such appraised value."

Section 5 authorizes the purchase of such lands by a third party in cases where the original owner does not make application for repurchase, and provides that the

Commission "shall cause such property to be appraised, and, in the event the amount bid shall be not less than such appraised value, the Commission shall accept such bid."

It has been suggested that since in Section {*83} 4 it is provided that the original owner, "shall not be required to pay more than the amount of delinquent taxes, penalties, interest and cost," the Commission has discretion to sell for less without appraisal, where no assertion is made by the taxpayer that it is worth less. Taking that phrase alone, the contention is plausible; but considering it with the provisions immediately following the phrase above quoted, it is not logical. It would seem that where the original owner asserts that the land is not worth the taxes, interest and penalty, appraisal must be had, whereas, if he makes no such contention, the Tax Commission may set a price at less than the tax, interest and penalty.

The intention of the Legislature was undoubtedly to prohibit the Commission from charging the original owner more than the amount he owed, irrespective of the fact that the land could bring more if the Commission refused to sell it for that; but to permit the sale for less if a lesser price were justified. Appraisal must be had by the Tax Commission in all cases where the taxpayer does not offer to pay the taxes, interest and penalty.

And yet, it is a matter of common knowledge, discussed by the Legislators in and out of the legislative halls, that vast amounts of property had been withdrawn from the tax rolls through deeds issued to the state, which the state could not dispose of, and which the state could not tax and receive therefrom its proper revenue, that it was your intention, as Governor of the state, and the intention of the Legislature, to liberalize those laws so as to return as quickly as possible those lands to the taxpayers and back to the tax rolls.

Presumably in the exercise of that intention, the Legislature in this same Act repealed all other laws dealing with the subject and which had been inadequate to accomplish the purpose sought. Among those repealed was Chapter 215, of the Laws of 1937, which permitted the sale by the State Tax Commission at private sale at its discretion without appraisal of any kind tracts deeded to the state on which the taxes appearing on the tax sale certificate (ordinarily the taxes for one year only) were not in excess of \$ 250.00 exclusive of interest and costs. It is estimated that ninety-five percent of the tracts in tax deed are in this class.

If it was the intention of the Legislature to liberalize those laws by substituting the present Act therefor, it must have thought that this Chapter 203 of the Laws of 1939 had that effect, and should be taken into consideration in construing that Act.

This is undoubtedly the case. The Legislature took the precaution of inserting in the Act itself its declared desire and intention in the following words:

"Section 11. It is hereby declared that it is the intention of this Act to provide a method whereby persons who have lost title to property through sale of the same to the state for delinquent taxes may recover such property and the title thereto without undue hardship

and whereby the state and its subdivisions may receive their proper revenue; and to the accomplishment of these intentions this Act is to be liberally construed."

Did the Legislature intend to withdraw from the State Tax Commission the discretion vested in that commission by Chapter 215 of the Laws of 1937, repealed by the present Act, and to require an appraisal or valuation of every tract on which the taxes, interest and penalty were not bid by the original owner? And did the Legislature mean by the words in Section 11 above quoted, "and whereby the state and its subdivisions may receive their proper revenue" that the Tax Commission must construe the Act to require sale to the original owner for the entire amount due unless it can be shown, by appraisal, that the property is worth less?

The answer to the last question is no. Had it intended that, it could easily have said that the purpose of this Act was to permit the reacquisition of the property by the owner through the payment of all taxes due. This right the taxpayer had had for three years or more previous to tax deed. My opinion is that the Legislature meant to say by Section 11 that it was its intention to provide a method whereby, (1) Taxpayers may recover their property without undue hardship, and, (2) Whereby the state may again place the same on the tax rolls and receive its proper revenue in the future. Revenue of {*84} which the state is being deprived through non-taxation.

If so, it is not necessary that the Tax Commission insist upon the total amount of taxes, interest and penalty in all cases or else refuse to sell, particularly where there are no debts outstanding in the counties for the years for which such taxes were levied, if it concludes, in the exercise of its discretion, that the declared purpose of the Legislature to return the property to the taxpayer and to the tax rolls cannot be speedily accomplished by such insistence.

In that case, what is its procedure? This statute requires the Tax Commission to cause an appraisal to be made. What is the purpose of the appraisal? Is it to determine the **intrinsic** value of the property by comparing it with the value of other like property, or is it to determine **the price at which it may speedily sell it?**

There is no procedure prescribed for the appraisal. When made, the appraisal is final. There is no contest, appeal or review provided. It is left wholly to the best judgment and discretion of the Commission, and cannot be attacked except for fraud. The effect is, therefore, to permit the Tax Commission where less than the tax, interest and penalty is offered by the original owner to look into the matter and determine whether a lesser amount is justified in carrying out the intent of the law. For that purpose, it may take into consideration the value of the property on the one hand, and all other factors surrounding each particular case which would in any way affect the speedy sale of the land and its return to the tax roll. It may take into consideration the fact that the tract is isolated, in the middle of another pasture, the owner of which could not be prevented from the free use thereof. It may take into consideration the fact that the land is so burdened with special assessments or other public liens that it is likely to lay indefinitely

without sale in the hands of the state, despite the fact that the intrinsic worth of such property may be valued at more than the accumulated tax, interest and penalty.

Taking those things into consideration, the Commission may conclude that a sale for the principal without interest and penalties would be a proper price at a speedy sale; or it may conclude that a fraction of the principal is all it could expect at a speedy sale in conformity with the declared intent of the Act. If so, (considering the purpose of such an appraisal), that becomes the appraised value of the land for that purpose, and the land may be sold at that price in the sound discretion and judgment of the Commission.

I admit, of course, that the requirement for appraisal in both Sections 4 and 5 of the Act, could be construed to mean an appraisal of the **intrinsic** value of the land, and that if the land were held long enough the state could in many cases make a very nice profit; but, as stated in Justice Simms' opinion in *State v. Hatley*, 34 N.M. 86:

"The Acts authorizing sales of land ____ are laws for the collection of taxes, and not for the confiscation of the property of the citizen, who, from any reason, may be unable to pay them when due. It would be beneath the dignity of a great commonwealth to seek to make gain out of the misfortune of her citizens."

The anxiety of the state to return these properties to the tax rolls is shown by the unusual provisions of Section 6 of the Act requiring the immediate assessment of such properties for the remaining portion of the current year after sale; and that the appraisals referred to in sections 4 and 5 of the act were not contemplated by the legislature to represent at all times a valuation of actual intrinsic worth of the properties, is further evidenced by the last paragraph of said Section 6 to the effect that the purchase price of any property sold under the Act "shall not be taken **nor considered** as being the value of such property for assessment purposes."

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