

Opinion No. 41-3877

August 23, 1941

BY: EDWARD P. CHASE, Attorney General

TO: Mr. C. R. Sebastian State Comptroller Santa Fe, New Mexico

{*91} In your letter dated August 19, 1941, you inquire whether county treasurers may issue a tax deed upon property which is delinquent for taxes in cases where no tax sale certificate has been issued. If the sale was conducted by the treasurer who is still the present incumbent there is no question but that such treasurer would have authority to execute the tax sale certificate any time during the term of his office.

Chapter 39, Laws of 1935, provides that upon failure of the outgoing treasurer to execute tax sale certificates upon property sold by him for delinquent taxes the incoming treasurer may execute such certificates provided he does so within three months from and after the time he takes office. However, the Supreme Court of this state, in the case of Foster vs. Bennett 44 N.M. 618, 107 Pac (2) 321 held that since the provisions of Section 1, Chapter 39, Laws of 35, is not named in the curative provision as one of the defenses which may be asserted against a tax title, it is not available after the tax deed has been executed.

In view of this decision, while acting as attorney for the Tax Commission. I have advised county treasurers in cases where the previous treasurer failed to execute tax sale certificates, and where the period of redemption has expired and the state is entitled to a tax deed, to proceed to execute a tax sale certificate and immediately thereafter to execute a tax deed to the state. This has been done in the past in several instances, and in view of the fact that the State Tax Commission is charged with the duty of notifying the former owner of the fact that the state has acquired title to the property, I do not believe that such procedure is in any manner to be questioned. However, I would not and do not advise county treasurers to execute a tax sale certificate in violation of the 1935 law above cited before the period of redemption has expired, nor would I advise that a tax sale certificate and tax deed be executed after the period of redemption has expired in the event the same were being executed to a private purchase.

Trusting this sufficiently answers your question, I am

By C. C. McCULLOH

Asst. Atty. General