

Opinion No. 42-4090

May 15, 1942

BY: EDWARD P. CHASE, Attorney General

TO: Mr. H. R. Rogers Commissioner of Public Lands Santa Fe, New Mexico. Attention: Mr. George Graham

{*197} This is in response to your recent request relative to State Purchase Contract No. 3488, covering the Northeast Quarter (NE 1/4) of Section 36, Township 9 North, Range 2 East.

This land was originally sold for Four Thousand Dollars (\$ 4,000), of which Three Thousand Six Hundred (\$ 3,600) is still due the state. The equity in the contract appears to be delinquent for state and county taxes from 1935 to 1941. This land being situated in the Conservancy District, conservancy assessments seem delinquent from 1934 through 1941 in an amount of approximately Four Thousand Two Hundred Eighty {*198} Three Dollars and Thirty Three Cents (\$ 4,283.33).

The State Land Office is authorized to cancel the above contract because of delinquency in the interest owing on the contract, and you request the opinion of this office on several questions arising out of the purported cancellation. Your questions will be restated and answered in the manner in which they appear in your letter.

(1) In case the Commissioner of Public Lands cancelled the contract, will the state be responsible for the payment of --

(a) Conservancy assessments

It is my opinion that the State would not be liable for conservancy assessments.

Section 30-515, New Mexico Statutes Annotated, 1929 Compilation provides in part:

"All assessments provided for in this act together with all interest thereon and all penalties for default in payment of the same, and all costs in collecting the same, shall, from the date of filing, in the county or counties where lands effected thereby are situated constitute a perpetual lien * * * * upon all the lands and other property against which such assessments shall be levied * * * * **provided, however, that assessments levied under this act shall not in any event be a personal liability against the owner**, but shall constitute a lien upon the property only."

The language of the above section indicates that the intention of the Legislature was that taxing authorities should look to the land alone to satisfy any obligation owing to the conservancy district for assessments.

Furthermore, I am unable to find any statute which authorizes the payment of conservancy district assessments by the State or by the Land Office and in the absence of such a statute, no payment can be made by the State or the Land Office, since no appropriation has been made by the Legislature.

Notwithstanding the fact, however, that the State would not be liable for the conservancy assessments if it should cancel the purchase contract involved, yet I believe that the State takes back that land subject to the conservancy assessments. (See Section 30-518, New Mexico Statutes Annotated, 1929 Compilation)

(b) Ad Valorem Tax Assessments --

I am of the opinion that the State is not liable for Ad Valorem taxes assessed against the equity of the purchaser since that equity would merge with the title held by the State should the State cancel the contract. If the equity of the purchaser merges with the title held by the State, that equity is extinguished and the property would be exempt from taxation by virtue of Section 3, Article VIII of the Constitution of New Mexico.

(2) In case of cancellation of the present contract and a new purchaser is had for the land, would such new purchaser become responsible for assessments previously made in order to receive further benefits.

I am of the opinion that the new purchaser would not become personally liable for the conservancy assessments, but he would take the land subject to the lien for the assessments. Referring again to Section 30-515, New Mexico Statutes Annotated, 1929 Compilation, it will be noted that {*199} the assessments are in no event a personal liability against the owner but only a lien upon the property.

Insofar as enforcement of the assessment lien against the property is concerned, Section 30-516 provides:

"The revenue laws of this state for the assessment, levying, and collection of taxes for state and county purposes, except as herein modified, shall be applicable for the purposes of the district in the collection of assessments including the enforcement of penalties and forfeiture for delinquent taxes."

(3) In case the contract is cancelled and the state leased under its agricultural lease these lands, would the state land office be authorized to set up conservancy assessments as improvement value.

Section 132-115 New Mexico Statutes Annotated, 1929 Compilation, as amended by Chapter 42, Session Laws of 1937, provides:

"Any person applying to lease any state lands upon which there are fences, buildings, reservoirs, ditches, dams, wells or other improvements or water rights appurtenant to said land belonging to another person or lessee, shall, before a lease shall be issued to

him, file in the office of the Commissioner a receipt showing that the price of such improvements and water rights, as agreed upon between him and owner thereof, or as may be fixed by the commissioner, has been paid to such owner, or deposited with the commissioner the price so agreed upon or fixed."

If the above section is applicable to your transaction, and I believe it is, then before any person is eligible to lease any state land under an agricultural lease, he must pay for, or deposit an amount for payment of, any improvements on the land. These improvements, then, would belong to the lessee and not to the state; and, therefore, such improvements could not be set up as improvement value.

By WILLIAM R. FEDERICI

Asst. Atty. General