

Opinion No. 44-4613

November 15, 1944

BY: C. C. McCULLOH, Attorney General

TO: Velma Riedell, Village Clerk, Deming, New Mexico

I have your letter of November 10, 1944. You will note that under Section 3-302 of the New Mexico 1941 Compilation that this office is only authorized to give opinions to state officers and departments. However, in view of the fact that one or more of your questions involve matters of interest to the State Tax Commission, we have been requested by the State Tax Commission to give you an opinion on the various questions raised in your letter.

Your first question is: If a person buys a piece of property on a tax deed, is he responsible for water and sewer bills against the property even though no lien has been filed?

If a lien has not been filed when the state obtains title to the property, we do not believe that the person buying such property from the state for taxes would be liable for water and sewer bills against the property. For a case considering the various types of liens which are not eliminated by a tax deed, see *Waltom v. City of Portales et al*, 42 N.M. 433, 81 Pac. 2d 58. It is noted that under the above case certain liens of a municipality are eliminated even though filed prior to the state's obtaining title. This is the rule unless a statute declares that the particular type of lien involved shall be on a parity with liens for general taxes such as is provided in Section 14-3703 of the New Mexico 1941 Compilation in connection with improvement liens. However, in view of the fact that your question only concerns the situation where the city lien is not filed in the first instance, we are not making a detailed analysis of the various circumstances when liens may or may not be wiped out by a tax deed.

Your next question concerns how long a lien remains in effect after it has been filed.

The lien itself is not affected by the statute of limitations although the enforcement of the obligation is, and even though the statute of limitations may have barred the obligation which the lien secures if an action should be maintained by the city to foreclose the lien, unless the defense of the statute of limitations should be raised, it would be considered waived. As an example of this, I call your attention to the fact that although the Supreme Court of the State of New Mexico held that certain paving bonds in the City of Albuquerque and other places in the state were barred by limitations, nevertheless the City of Albuquerque, acting upon the theory that I have just stated, has proceeded to foreclose numerous liens that were technically barred by the statute of limitations, and upon the failure of the owner of the property to raise the objection of the statute of limitations, the City of Albuquerque has successfully foreclosed their liens.

You further ask whether liens could be filed on balances carried over a period of years.

While your question does not set forth the number of years in which the balances have been carried and therefore, such balances may or may not be barred by limitations, we might suggest that liens may be filed and an attempt could be made to foreclose on such liens in which event, unless the owner defended the suit and interposed the objection of the statute of limitations, it would be successful. In similar circumstances various cities and towns have filed liens and have, by following such a procedure, been able to collect accounts that they otherwise would not have collected.

Your last question concerns whether in a successful suit to quiet title, if the utility bills are not paid, the person winning the suit would still be responsible for these accounts.

We will assume in answering this question that a lien has been filed prior to the filing of the suit, and the question which you actually wish to have answered is whether or not the quiet title suit would eliminate the lien of the city for such utility bills. Assuming the existence of such lien at the time of the bringing of the suit, if the city is named a party defendant and there is service on the city or the city accepts service and enters an appearance, then in such an event

a decree quieting title against the city as well as other defendants would eliminate any lien or other interest in the property the city might have. If, on the other hand, the Village of Deming should not be named a party defendant and therefore not a party to the suit, it would, of course, follow, that the quiet title suit could not affect any right or interest of the Village of Deming.

Hoping that the above general discussion of the various problems presented in your letter will be of some benefit to you, I remain

By HARRY L. BIGBEE,

Asst. Atty. General