

Opinion No. 44-4606

October 28, 1944

BY: C. C. McCULLOH, Attorney General

TO: Mr. Frank S. Snyder, Public Accountant, State Tax Commission, Santa Fe, New Mexico

In connection with your duties performed in auditing the State Tax Commission, you have requested an official opinion on the following question:

"Whether or not contracts for the sale of State owned land, executed by the State Tax Commission, becoming delinquent prior to the effective date of the 1943 amendment, could properly be cancelled by the State Tax Commission at the present time, without the giving of notice and recording of such notice as required under the 1943 amendment."

Section 76-744 of the 1941 Compilation, as in effect prior to the 1943 amendment, provided:

"In the event any purchaser of property under the provisions of this act (Secs. 76-724, 76-738 -- 76-747) shall default in the payment of any installment when the same shall be due and shall continue in default for thirty (30) days thereafter, the contract of purchase shall be deemed to have been canceled by operation of law and thereupon the full and complete title to the said property shall be vested in the state to the same extent as though no contract had been executed; and the state tax commission shall execute a certificate of cancellation which shall be recorded, without cost, in the county in which the property described in the contract is located."

It is noted that by operation of law, a contract was cancelled by default in the payment of any installment for thirty days. This cancellation, as provided in such section, is automatic, and took no action on the part of the State Tax Commission to make such cancellation final. Therefore, if, by operation of law, a contract became cancelled prior to the effective date of the 1943 amendment, and such contract has not since been revived by agreement with the State Tax Commission, the State Tax Commission could now execute a certificate of cancellation, as provided in Section 76-744, which is nothing more than evidence that the contract became cancelled by operation of law.

Trusting that the foregoing sufficiently answers your inquiry, I am

By HARRY L. BIGBEE,

Asst. Atty. General