

Opinion No. 45-4667

February 26, 1945

BY: C. C. McCULLOH, Attorney General

TO: Mr. Claron E. Waggoner, District Attorney Socorro, New Mexico

{*26} I have your letter of February 17, 1945 in which you request an opinion concerning whether a tax deed from the State of New Mexico would wipe out a mortgage held by the Farm Security Administration.

Section 76-717 of the 1941 Compilation provides, in part, as follows:

"Such deed shall vest in the grantee, his heirs, successors and assigns, a perfect and complete title to the premises free and clear of all liens and incumbrances, except as hereinafter provided in this section, which deed shall be substantially in the following form; * * *"

It is noted that there is no provision in this section, or in any other applicable sections, which places a mortgage, such as you describe, on a parity with liens for taxes.

It is therefore my opinion that a deed issued under the provisions of Section 76-717 of the 1941 Compilation eliminates all mortgages on the property. (See *Waltom v. Portales*, 42 N.M. 433, 81 P. (2d) 58; and *Hood v. Bond*, 42 N.M. 295, 77 P. (2d) 180.)

Of course, an entirely different question would be presented in event the owner of the property who gave the mortgage repurchased the property for taxes, rather than a third person buying such property, which is the case involved here.

By HARRY L. BIGBEE,

Asst. Atty. General