

## Opinion No. 52-5476

January 21, 1952

**BY:** JOE L. MARTINEZ, Attorney General

**TO:** Mr. Melvin Yost Tax Commission Attorney State Tax Commission Santa Fe, New Mexico

{\*192} This is in reply to your letter of January 8, 1952, requesting an interpretation of Section 76-711 N.M.S.A. This statute reads as follows:

"Certificates of sale may be assigned by proper endorsement thereon or attached thereto, duly signed and acknowledged by the legal owner thereof. **When issued to the state, such certificates may at any time thereafter and before the redemption period of two (2) years shall have expired, be sold and assigned by the county treasurer without acknowledgment by him to any one applying therefor and paying a fee of fifty cents (\$ .50) for each assignment together with the total amount of the face of the certificate and the accrued interest and costs thereon.** Certificates assigned as in this section provided, including those assigned by the county treasurer, shall be entitled to record in the office of the county clerk as other instruments affecting real property and with like effect. The treasurer shall notify the state tax commission of such assignments, covering property sold the state."

Directing your attention specifically to the portion of this section which I have underlined, you ask if when an application for an assignment of such a certificate has been received by the County Treasurer within the two-year period, together with a tender of all sums mentioned in this section, it is then mandatory upon the Treasurer to make the assignment, or whether this language is merely permissive in nature.

It is my opinion that this provision is permissive only, and that it is within the discretion of the County Treasurer whether or not he shall make such assignments. As a general rule a provision couched in such permissive terms as "may", "authorizes" or "power" is regarded as directory or discretionary. **50 Am. Jur. 50.**

Clearly, such is the nature of the language of this section under consideration. When the use of the words in other than their ordinary meaning is intended, such intention must clearly appear. It may be said that the interpretation of permissive terminology as mandatory may be made only when the context or subject matter compels such construction, or where it is necessary to give effect to the clear policy and intention of the Legislature. **50 Am. Jur. 53.**

I have reviewed Chapter 76, Art. 7, N.M.S.A.. very carefully in an attempt to discern any such legislative intent which would give the language of Section 76-711 mandatory force. I was unable to discover any such intent. To the contrary, it is clear that the

sections of Art. 7 intend to afford much more protection to the original owner of {\*193} delinquent tax land than they do to purchasers or assignees of tax sale certificates.

Taking all these facts into consideration, it is obvious, in my opinion, that the language of Sec. 76-711 is "discretionary" and "permissive" and not "mandatory".

I hope that this opinion answers all of your questions on this subject.