

Opinion No. 54-5998

August 2, 1954

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. Ruben Rodriguez Tax Commission Attorney State Tax Commission Santa Fe, New Mexico

{*457} In your letter dated July 26, 1954, you request an opinion on the following question:

"Where a county treasurer has inadvertently failed to issue tax sale certificates and subsequent tax deeds on delinquencies for 1950 and prior years, can he at this date, in view of the decisions of the Supreme Court and our statutory provisions, issue a tax sale certificate and tax deed without allowing the owner of the property to redeem as required by law; or, must he, under the provisions of Chapter 160, Laws of 1953, include these delinquencies on the record or list provided for and allow a two-year period of redemption before issuing a tax deed; or, inasmuch as there has been no tax sale certificate or tax deed issued, can he allow a delinquent taxpayer to pay taxes, interest and penalties without issuing a certificate of redemption therefor?"

I understand from you that a sale was actually made in January, 1952 for 1950 and prior years delinquent taxes by the Treasurers involved, but through inadvertence, a small number of tax sale certificates and tax deeds have not been issued. Since the sale was made prior to the effective date of Chapter 160, Laws of 1953, the law in effect at the time sale was made would govern in the matter of redemption. *Williams v. Van Pelt*, 35 N.M. 286.

The period of redemption is two years from the date of sale, but under the previous law, the treasurer was required to issue tax sale certificate immediately after the date of sale. Where third persons' rights have not intervened and the property was sold to the State, under the authority of State ex rel. *McFann v. Hatley*, 34 N.M. 86, the treasurer may allow the owner to redeem from the tax sale, although the period of redemption has expired. The primary purpose of the delinquent tax statute is to collect taxes, and whether the collection is made by redemption from the county treasurer or repurchase by the owner from the State Tax Commission, does not seem to be too material.

Inasmuch as the treasurer has the duty of executing tax sale certificates immediately after the tax sale, we feel that the proper procedure, if redemption is sought before the tax deed is executed and recorded to the State, would be for the treasurer to make out a tax sale certificate, and upon payment of the sum required for redemption, to make the redemption certificate in order that the records required to be kept by the previous law will be complete.

By: C. C. McCulloh

Assist. Attorney General