

Opinion No. 58-206

October 14, 1958

BY: OPINION OF FRED M. STANDLEY, Attorney General Robert F Pyatt, Assistant Attorney General

TO: Honorable Murray E. Morgan, Commissioner of Public Lands, Santa Fe, New Mexico

QUESTION

QUESTIONS

Pursuant to Enabling Act, § 10, a tract of public land was sold by purchase contract of 30 year term. Various assignments thereof and parceling of said tract occurred. Payment in full for the tract has not been tendered. Under these facts, as hereinafter detailed,

1. Can the State honor the assignment of the purchase contract?
2. Does Lea County (assignee of the vendee's interest in 10 parcels) have equitable title thereto?
3. Since Lea County has "paid" (hereafter explained) for its 10 parcels, may it receive patents thereto?
4. Could anything occur with respect to the other interests in the original tract, that is, to the other 40 parcels, that would defeat ultimate legal title being vested in Lea County?

CONCLUSIONS

1. Yes.
2. Yes.
3. Not until the contract is fully and completely performed as to the entire original acreage.
4. Yes.

OPINION

ANALYSIS

The facts, as given us, are as follows: Several years ago, pursuant to § 10 of the Enabling Act, the State advertised and sold at public auction a tract of state land, located in Lea County. The purchaser elected to take a purchase contract, paying 5% of the agreed price, the balance being payable within 30 years, at 4% interest on the balance. We shall, for convenience, refer to the original purchaser as X. X then subdivided the entire tract into 50 parcels, and by assignments, assigned 10 parcels to A, 20 parcels to B, and 20 parcels to C. By mesne assignment, A assigned his interest in the said 10 parcels to Lea County. Lea County in turn paid you 95% of the total price of Lea County's acreage, computed on an average basis. You have refused to issue Lea County a patent or patents, until B and C pay four-fifths of 95% of the total agreed price of the original tract, that is to say, you refuse to issue a patent to any of the acreage involved until the entire price for the entire original tract is fully paid. No default in any manner has occurred. Certified copies of all assignments have been filed with you.

In regard to your first question, your attention is respectfully directed to § 7-8-21. N.M.S.A., 1953 Compilation, reading:

"Any purchaser of state lands under deferred payment contract, not in default as to any payment, may assign all right, title and interest under any such contract; Provided, certified copy of the assignment shall be filed with the commissioner before same shall become effective."

Under the facts as given, the original assignment is valid, and in Opinion of the Attorney General No. 6130, rendered March 16, 1955, this office recognized the validity of partial assignments of portions of an original tract of state land sold under purchase contract. In our opinion, the same is true as to mesne assignments in whole or in part. Since § 7-8-21 has been fully observed, we answer your first question in the affirmative.

As to your second question, based on general principles of the law of vendor and purchaser, at least since § 7-8-21 has been followed we hold Lea County has equitable title to the 10 parcels in question.

The crux of the instant problem is reached when we arrive at your third question. In **Zinn v. Hampson**, 61 N.M. 407, 301 P. 2d 518, much the same problem as we have here was involved. A purchase contract for the sale of State land was involved; the land was parceled; there were various assignments of the parcels; and the total purchase price for the entire original tract had not been paid. After discussing the applicable provisions of law, the Court at page 412 said:

"It will be seen from an examination of the aforementioned provisions of the Enabling Act, State Constitution and Statutes that there is no specific authority given the Commissioner of Public Lands to issue a patent to a portion of a tract of land sold under contract when only that part covered by the patent has been paid for and the balance due under said contract has not been paid at the time the patent is issued.

We are of opinion, and so hold, that there was no authority of law for the execution of the patent involved in this case."

That holding precludes any conclusion except the one reached by us.

The answer to your fourth question is that if any assignee or assignees should default, the same could gravely prejudice Lea County's ultimate acquisition of legal title, since § 7-8-20 provides:

"Failure by a purchaser of state lands to comply with the terms and conditions of his contract of purchase shall, at the option of the commissioner, work a forfeiture of such contract after notice as prescribed by section 51-98 (7-8-52).

In case of forfeiture all moneys theretofore paid on any such contract shall remain the property of the state."

In other words, if any default should occur, we believe you could then exercise your option under this statute by giving notice as prescribed by § 7-8-52. But consistent with the holding and reasoning in **Application of Dasburg**, 45 N.M. 184, 113 P. 2d 569, the cancellation, if any, of the contract would have to be of the entire tract. Consequently, notice should go to all interested parties. We express no opinion as to the rights of said parties as between themselves.