

Opinion No. 65-54

April 5, 1965

BY: OPINION OF BOSTON E. WITT, Attorney General Thomas A. Donnelly, Assistant Attorney General

TO: Mr. Richard C. Barela, Superintendent, La Joya Consolidated Schools, La Joya, New Mexico

QUESTION

QUESTIONS

1. Can a resident property owner who is delinquent in paying his taxes for a long period of time be eligible to vote in a school bond election?
2. There are a great number of residents whose property has been deeded to the state by tax deed. May these residents property owners still vote in a school bond election?

CONCLUSIONS

1. See analysis.
2. No.

OPINION

{*92} ANALYSIS

The controlling legal provisions determinative of your first and second questions is Article IX, Section 11 of the New Mexico State Constitution. This section sets out in applicable part:

"No school district shall borrow money, except for the purpose of erecting and furnishing school buildings or purchasing school grounds, and in such cases only when the proposition to create the debt shall have been submitted to a vote of **such qualified electors of the district as are owners of real estate within such school district, and a majority of those voting on the question shall have voted in favor of creating such debt. . . .**" (Emphasis supplied).

This constitutional section interdicts against any persons voting in school district bond elections who are not "owners of real estate within such school districts."

By statute, persons owning real estate which is subject to taxation, if such taxes are not paid and become delinquent, the land is directed to be sold by the county treasurer to

the state in satisfaction of the tax lien. Section 72-8-1, N.M.S.A., 1953 Compilation sets out in this regard:

"On the third Monday in January of each year the treasures of the several counties of this state shall sell to the state of New Mexico, for the amount of the taxes, penalties, interest and costs due thereon, the real property, including severed rights of timber, minerals or other severed interests, situate in their respective counties, **upon which taxes are more than (6) six months delinquent as shown by the tax roll of the county for any year or years.**" (Emphasis supplied).

Provision is made by Section 72-8-9, N.M.S.A., 1953 Compilation for redemption by any person having a legal or equitable right in such real estate at any time before two years from the date of such sale by payment to the county treasurer of the amount for which the property was sold with interest and costs. Upon expiration of the redemption period, Section 72-8-15, N.M.S.A., 1953 Compilation specified that "the county treasurer shall immediately execute tax deeds to the state for all unredeemed property sold to the state. The title so acquired shall be in all respects the same as any title acquired by the state by purchase." By Section 72-8-31, N.M.S.A., 1953 Compilation the person, or any lienholder whose title to or interest in realty has {*93} been extinguished by the issuance of a tax deed to the state may have a prior right to repurchase such property from the state. This section also states that "For a period of one year after the date any tax deed to the state has been recorded, the state tax commission shall not convey any property acquired by such tax deed to any person other than one entitled to repurchase the property." Following the passage of one year such realty may be sold at public auction or at private sale.

In **Hargrove v. Lucas**, (1952) 56 N.M. 323, 243 P.2d 623, the New Mexico Supreme Court ruled that:

"The deed from the County Treasurer to the State of New Mexico stripped the former owner of all interest in the land and conveyed a fee simple title to the grantee. Alamogordo Improvement Co. v. Hennessee, 40 N.M. 162, 56 P.2d 1127. True, as an act of grace, by Sec. 76-740, N.M.S.A., 1941 Compilation, the former owner was given a preferential right of repurchase, but this was conditioned on his making application therefor to the state tax commission before anyone else had applied. DeBaca v. Perea, 52 N.M. 418, 200 P.2d 715. * * * The tax deed required to be recorded by the 1931 Act is the one from the County Treasurer which divests the former owner of his title and not the one from the Tax Commission to its grantee. * * *"

As seen from the holding in this case, upon the conveyance of a tax deed from the county treasurer to the State of New Mexico for delinquent taxes then such deed "stripped the former owner of all interest in the land." This being the case then such former land owners no longer would be "owners of real estate within such school district" within the requirement of Article IX, Section 11 of the New Mexico State Constitution and thus would not be valid voters in a school bond election. Thus, in answer to both of your questions we hold that a resident property owner who is

delinquent in paying his taxes may vote in a school bond election, unless however, he is so delinquent that the County Treasurer has conveyed a tax deed to the State of New Mexico for delinquent taxes. In such event, upon the conveyance the former property owner is divested of his ownership of such property and is no longer entitled to vote in school district bond elections. See also Attorney General's Opinions No. 64-27, dated March 9, 1964, relative to who may vote in school bond elections, and No. 64-34, dated March 12, 1964 bearing upon persons who are entitled to vote in school bond elections. Copies of these opinions are included herewith for your study.