

## Opinion No. 14-1379

November 5, 1914

**BY:** FRANK W. CLANCY, Attorney General

**TO:** Mr. Howell Earnest, Traveling Auditor and Bank Examiner, Santa Fe, New Mexico.

### **TAX SALE CERTIFICATES.**

Relative to the redemption of tax sale certificates, and deduction from county warrant of taxes due by the payee.

### **OPINION**

{\*240} I am in receipt of your letter of yesterday, enclosing another from W. W. Cox, Treasurer of Dona Ana County, relative to tax sale certificates, as to which you ask my opinion.

The first matter about which Mr. Cox writes, is stated as follows:

"As we understand the law, when property is sold to the County, or to private parties, before the former owner can clear the property he must pay the amount of the certificate, plus any additional tax assessed later, now the people who had property sold, and who will soon be due to pay the 1914 tax, as we understand it, we must collect the amount of the certificate and the entire amount of the 1914 tax."

It is quite true that before the former owner can clear the property he must redeem from the tax sale, and any additional tax later assessed would be payable just like any other tax, but the former owner is not compelled, in order to redeem from the tax sale, to pay at the same time the later taxes. He might be prepared to redeem from the tax sale in order to stop the running of the high interest or to prevent the making of a tax deed, when he could not, at the same time, pay the later taxes. It is a safe rule for the county collector to receive any money which may be tendered to him, whether it is for the purpose of redemption from a tax sale or for the payment of taxes for any particular year, and there is nothing which would justify his refusing to receive a part of the money due because the whole amount is not tendered, including taxes for later years.

The other matter referred to in the letter from Mr. Cox is as follows:

"Another question which has been raised is the holding of warrants where people have had their property sold for delinquent tax, the best attorneys here advise that after the County has sold the property for delinquent tax, the payment cannot be forced thru any other channel and that we have no right to stop payment on warrants even though the party has not redeemed the certificate."

As to this matter, where property has been sold for delinquent taxes and the county has received its money for those taxes from the purchaser, the county no longer has any interest in those taxes, and my opinion is that the provisions of Chapter 91 of the Laws of {\*241} 1901, which require the treasurer to deduct from any warrant presented the amount of taxes due by the payee or any assignee of the warrant, can have no application. He no longer owes those taxes to the county and any further transaction with regard to them would be for the benefit of the purchaser and the former owner in which the treasurer might receive money to be paid over to the purchaser. In those cases, however, where the property has been struck off to the county for lack of bidders at the delinquent tax sale, it would seem that a different condition prevails. The public treasury has not received the amount of the taxes, and I can see no good reason why the treasurer should not deduct from any warrant presented the amount of such "taxes, penalties and costs." Such a deduction, if sufficient in amount, would practically operate as a redemption from the tax sale, and if not sufficient, a record of the amount of such deduction should be made on the tax rolls and in the record of tax sales.