

**Opinion No. 19-2260**

May 14, 1919

**BY:** HARRY S. BOWMAN, Assistant Attorney General

**TO:** Mr. A. G. Whittier, State Traveling Auditor, Santa Fe, New Mexico.

Time of Vesting of Title of Property Sold for Taxes.

**OPINION**

Your letter of April 26th, regarding the time when title to property sold for delinquent taxes vests in the purchaser, has not received a more prompt reply owing to the absence of Mr. Askren from the office and the engagement of the writer continuously in the trial of cases in court.

Your first inquiry concerns the question as to when an individual purchaser of a tax certificate upon the sale of the property for taxes acquires title to the property conveyed by the certificate. You state a hypothetical case where the property was sold to a party at delinquent tax sale, but you do not state the date of sale nor the years for which the taxes were delinquent.

If the sale occurred prior to the enactment of Chapter 80, Laws of 1913, then the provisions of Chapter 22, Laws of 1899 govern, but if the sale occurred subsequent to the becoming effective of the laws of 1913, then Chapter 80 of the Laws of that year will govern the question.

I assume that your inquiry involves a sale for taxes which became delinquent subsequent to the year 1913 and, of course, that the sale was also subsequent to that year, since you suggest that Chapter 80, Laws of 1917, is to be considered in arriving at a solution of the problem.

I am of the opinion that title to the property conveyed by the tax certificate vests immediately upon the recording of the certificate in the office of the county clerk, and that the vesting of the title is not delayed until a period of three years from the date of sale or until the period of redemption expires, as is suggested in your letter. This view is sustained by the wording of section 10, Chapter 80, Laws of 1917, wherein it is provided that "such certificate (tax certificate) shall be recorded in the office of the county clerk in a book to be kept for such purpose, and when so recorded shall vest in the purchaser his heirs or assigns, a complete legal title to the real estate therein described, subject, however, to redemption as herein provided, and unless redeemed such property shall thereafter be assessed in the name of the purchaser, or his assigns \* \* \* \*."

I am further of the opinion that a county which purchases property at a delinquent tax sale occupies the same position in regard to the vesting of the title as does a private individual purchaser.

My authority for this view is contained in the last two lines of the above numbered section, wherein it is provided,

"Counties purchasing at tax sales shall be deemed purchasers within the meaning of this act."

The above holdings are based upon the supposition that the tax sale was made subject to Chapter 80, Laws of 1917.

The law in effect at the time that the sale is made governs the sales for delinquent taxes. *Cooper vs. Hills*, 25 N.M. 696, 171 Pac. 504.

It will therefore be seen that title passes to the property at the time that the tax certificate is recorded and not at the time of the expiration of the period of redemption or the issuance of the tax deed. The time when the period of redemption begins to run, however, is governed by another section of the law. The period of redemption begins to run at the time that the property is sold, and the time of the recording of the tax certificate has no effect upon the period of redemption. This is the holding of the supreme court in the case of *Hiltscher vs. Jones*, 23 N.M. 674, 170 Pac. 884, where it was held that the time the property is struck off to the county is the date of the sale and that the tax certificate thereafter issued is only written evidence that the sale has taken place. Further, the fact that certificate is not recorded for a period of two and one-half years thereafter does not affect the period of redemption, but that the period of redemption expires three years from the date of sale.

I am not quite certain to what case you refer in the first paragraph of your letter, but I assume that it is the case last above named, and that you now have same at your disposal, having been supplied with a copy of the 23 N.M. Report.