

## Opinion No. 19-2336

August 2, 1919

**BY:** N. D. MEYER, Assistant Attorney General

**TO:** The State Tax Commission, Santa Fe, New Mexico.

Taxation of Timber Lands.

### OPINION

We have your letter of July 23 in which you state that the McKinley Land & Lumber Company has bought certain timber lands from the state, paying therefor \$ 3.15 per acre for the land and \$ 2.15 per thousand feet for the standing timber thereon, payment for this land and timber to be made on deferred payments. You ask the question as to how the timber on said lands is to be taxed.

We begin with the premise that the State acquired these lands and timber and may dispose of them for the purposes of the grant under authority of the Enabling Act and that the laws governing the control or sale of said lands, apply with equal force to the timber or other products upon said lands. Therefore, when the term "land" is used in connection with those lands granted by Congress to the State of New Mexico we must have in mind that it includes timber as well as other products, and that any legislation passed by the State of New Mexico in regard to said lands would apply to the timber thereon even though the word "timber" is not used.

Section 5235 of the Code of 1915 provides the mode of taxation as regards state lands sold or contracted to be sold and, as heretofore stated, the modes prescribed by the section would apply to timber sold or contracted to be sold. In construing this section this office ruled that after the value had been ascertained and fixed, then the purchaser should be taxed not upon the entire value when he has only paid a part thereof but upon so much of the value as would bear to the total value the same proportion as the amount which he has paid bears to the full amount which he agrees to pay.

In 1917 the Legislature enacted:

"That all lands sold under the provisions of this act or for which existing contracts are changed in conformity herewith shall be assessed for taxation at their full value, which shall in no case be more or less than that of similar lands of the same character . . ."  
Sec. 3 Ch. 52,

It appears that by this section the legislature intended that state lands, or as we construe it, any products thereof such as timber, etc., should be taxed at their full value disregarding the amount paid by the purchaser under the contract.

However, the last session of the Legislature by virtue of House Bill 63, as amended, Section 1, returns to the former method of taxation of state lands. It provides:

"The legal and equitable interest arising under and accruing to the owner of any contract for the purchase of any state lands, whether such contract be entered into under the provisions of this act or any other act authorizing the sale of state lands under contract, option, or agreement, entered into by the state and any person or corporation shall be taxed to such owner or contractee at the full cash value of both such legal and equitable interests together with the value of all improvements made upon such lands so contracted for; provided, that in no event shall such equity be taxed at less than forty per cent of the purchase price stipulated in such purchase contract."

It therefore seems that under this last law the interest which the purchaser has in the land up to and including the amount that he has paid shall be taxed, provided that the value of said equities shall not be taxed at less than forty per cent of the purchase price.

We are of the opinion as has been indicated that all these laws touching the method of taxing state lands sold or contracted to be sold apply to timber sold or contracted to be sold as well. Therefore, in the specific instance which you mention you should tax the timber in the same manner as the land is taxed and for this purpose the law in effect at the time of assessment would govern. Section 1 of House Bill No. 63 as amended I believe makes the method of taxing said lands sufficiently clear to enable you to proceed when it becomes applicable without the necessity of explanation on our part.