

## Opinion No. 20-2494

February 25, 1920

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

**TO:** Honorable H. J. Hagerman, President, The Taxpayers' Association, Roswell, New Mexico.

Taxation State Lands Sold Under Deferred Payment Plan.

### OPINION

We have your letter of the 9th instant, regarding the construction to be placed on Chapter 89, Laws 1919, in connection with the assessment of state lands sold under the deferred payment plan, and reply to same has been delayed owing to the Special Session of the Legislature just adjourned, duties in connection with which have required the time of our entire force for the past two weeks.

From the wording of the act, it is rather difficult to arrive at the exact intent of the legislature in the matter of the taxation of the interest of the purchaser of state lands, but we believe that there is sufficient therein to indicate that it was the purpose to tax the land at the valuation of not less than 40 per cent of the purchase price where less than that percentage had been paid under the contract; where, on the other hand, more than 40 per cent of the purchase price had been paid, the land was to be valued for the purpose of taxation at the actual amount that had been so paid.

We are of the opinion that there is no difference between the "legal" and "equitable interest," as set out in the act, but that both interests are identical. We cannot understand how any legal interest would vest in the purchaser as any legal title to or interest in state lands is in the state, and the only interest that the purchaser would possess (up to the time of the issuance of the state patent to him) would be an equitable interest only.

It is our view, however, that if the full cash value of the land is more than the contract price that the valuation for taxation purposes should be based on such "full cash value" rather than the purchase price. For illustration: If state land was purchased for \$ 5.00 per acre and now the value thereof has increased to \$ 10.00 per acre, the valuation of such land should be so much of ten dollars per acre as has been paid by the purchaser, provided that in no event the valuation should be less than 40 per cent of \$ 5.00, or \$ 2.00 per acre.

If the above view is correct, the amount paid by the purchaser would have no effect upon the valuation for taxation purposes, unless he had paid more than 40 per cent of the contract purchase price.

Under this holding, five-dollar land would be assessed at not less than two dollars, and three-dollar land would be assessed at not less than \$ 1.20.

We have conferred with the State Tax Commission in regard to the above, and the members of the Commission agree with us in our interpretation of this law, with the exception of the part thereof which holds that the valuation should be based on the actual cash value at the time of the assessment rather than the contract purchase price.

The Commission will write a letter to all assessors instructing them in accordance with the views hereinabove expressed.