

Opinion No. 21-2821

February 10, 1921

BY: HARRY S. BOWMAN, Attorney General

TO: Mr. W. H. Graham, Treasurer and Collector, Lordsburg, New Mexico.

Authority County Treasurers to Accept Payment Taxes Upon Part of Property Taxed.

OPINION

{*24} I have your letter of the 7th instant, enclosing copy of my opinion rendered to the State Tax Commission under date of January 31st, relative to the authority of treasurers and collectors to accept moneys tendered in payment for a part of a tax certificate where it is desired to redeem only such part, the title to the remaining property described in the certificate continuing in the county.

You ask if this opinion would apply to a case where a tax certificate is held by the county, and one purchaser desires to purchase one part of the property covered by the certificate, another person another part, and the title to the third part remaining in the county?

There is no legal authority which would permit the division of a tax certificate in that manner. It is not the **property** which is sold by the treasurer and collector, but it is the **tax certificate**, and our courts have held that this certificate does not convey the title; the title remains in the county until the tax deed is issued. Since the authority is to sell the certificate and not the property, there is no method by which the property described in the certificate may be divided into parts, and each part sold. Nor is there any authority to issue a supplementary certificate, as the law provides for no such procedure, and the person purchasing such a certificate would receive nothing at all under the law.

As stated in the opinion enclosed in your letter, there is no manner provided whereby the costs and penalties could be divided among the various tracts of land and the personal property which is covered by the certificate. The costs of advertisement and publication could not be apportioned pro rata, because there is no law which provides for such an apportionment, nor is it possible of ascertainment as to {*25} how much of the cost of advertisement should be applied to one parcel or class of property, and how much to another.

The same rule would apply in the matter of the sale of tax certificates as applies to their redemption, as the same is stated in my opinion to the Tax Commission above mentioned.

In compliance with your request, I am returning to you herewith the copy of the opinion which was enclosed with your letter.