

Opinion No. 21-2775

January 11, 1921

BY: HARRY S. BOWMAN, Attorney General

TO: Mr. Powhatan Carter, Lovington, New Mexico.

Tax Deeds Must Be Executed by Treasurer of Parent County.

OPINION

{*14} I have your letter of the 5th instant, propounding the following question:

"Which County Treasurer and Collector is authorized by law to issue a tax deed for property sold for taxes in the County of Eddy in the year 1912 for 1910 taxes, the county being the purchaser, and the certificate duly recorded subsequent to the sale and having been assigned to the purchaser in 1918, the land now being in Lea County by virtue of the law which created the County of Lea out of a part of Eddy County?"

The question arises as to whether the Treasurer and Collector of Lea County, or of Eddy County should issue the deed under the above mentioned circumstances.

In Vol. 37, Cyc. page 1428, Section C, we find the rule governing such cases stated as follows.

"Where land duly assessed and delinquent is thrown into a new county by a change of boundaries, both the sale and the deed should be made by the proper officers of the old county."

The rule as above stated is supported by the cases of

Hazleton vs. Simpson, 58 Wis. 579, 17 N.W. 332; Austin vs. Holt, 32 Wis. 478.

In the latter case the property was assessed and became delinquent in one county, and subsequently, but before sale thereof for delinquent taxes, the new county was created and it was held that the land should have been described in the tax deed as having been located in the old county. In the former case the question arose as to the authority of the clerk of the old county to execute a tax deed the lands having been at that time located in the county later created, and the court held that the clerk of the older county was the proper officer to issue the tax deed.

By reason of the foregoing authorities, and by further reason of the fact that in this case, the property having been sold to the County of Eddy and subsequently sold by that County to the present purchaser, there would be no authority in the Treasurer and

Collector of Lea County to issue the tax deed based upon a certificate of sale issued by Eddy County.