

Opinion No. 26-3910

August 25, 1926

BY: ROBERT C. DOW, Assistant Attorney General

TO: Hon. J. E. Owens, Chief Tax Commissioner, Santa Fe, New Mexico.

This Office is in receipt of your communication of August 25, wherein you request an opinion relative to certain tax matters. You desire to know what effect, if any, the repeal by Chapter 102 of the Laws of 1925 of § 453 of Chapter 133 of the Laws of 1921 has upon the question of giving notice to owners, mortgagees and others in so far as such notice relates to tax sale certificates issued prior to 1925.

Chapter 133 of the Laws of 1921 carries a saving clause which is found as § 478. This section provides that the provisions of the Act shall not affect or be applicable to taxes heretofore assessed, or which are delinquent at the date of the approval thereof. Therefore, any taxes which were assessed prior to the 1921 law would not be affected by the notice provided for therein.

It is true that § 28 of Chapter 102 of the Laws of 1925 specifically repeals § 453 of Chapter 133 of the Laws of 1921 relative to giving notice, but the 1925 act is not retroactive in so far as the requirements for giving notice is concerned, and I am of the opinion that the owner of the land cannot be deprived of the right which he had to such notice provided the right existed at the time of the sale of the land. The general rule of law sustaining this contention is found in 20 R. C. L. § 390, and in the case of *Johnston v. Taylor*, 88 Pac. 903.

Where a suit is brought, however, under § 7 of Chapter 26 of the Laws of 1925, I am of the opinion that the above rule would not apply for the reason that said § 7 is in effect an additional remedy for the collection of taxes. See *Glasgow v. Peyton*, 22 N.M. 97 on this point.

In all cases, therefore, where taxes have been assessed after the passage of Chapter 133 of the Laws of 1921, and a sale of said land for taxes held prior to the date of the passage and taking effect of Chapter 26 of the Laws of 1925, I am of the opinion that before tax deed can issue to such property that the notice provided for in § 453 of the Laws of 1921 must be given.