

## Opinion No. 37-1688

June 25, 1937

**BY:** FRANK H. PATTON, Attorney General,

**TO:** Mr. E. R. Wright Attorney at Law Santa Fe, New Mexico

{\*129} In response to your letter of June 23, we have examined the abstract of title, plat, and proposed deed in re land west of F. E. R. A. Building and fronting on Cerillos Road, which is to be sold by the First National Bank of Santa Fe, New Mexico, to the State of New Mexico.

The plat of the tract as surveyed is apparently correct.

In so far as the abstract is concerned, we call your attention to the following:

1. It does not appear from the abstract that the taxes for 1936 have been paid.
2. Referring to page 16 of Supplemental Abstract of Title No. 1250, there appears of record a mortgage deed wherein Marcelino A. Ortiz is mortgagor and the First National Bank of Santa Fe, New Mexico, is the mortgagee, said mortgage deed being dated January 30, 1934, filed January 30, 1934, recorded in Book 18-Mortgages at Page 221. Tract 2 therein apparently appertains to the land herein involved and it does not appear from the abstract that this mortgage, or any part thereof, has been released of record.

It is true that by warranty deed executed by Ricardo Alarid, Sole Executor under the Last Will and Testament of Marcelino A. Ortiz, appearing at page 13 of Supplemental Abstract of Title No. 1486, the legal title was transferred to the First National Bank of Santa Fe, New Mexico, and it may be that the equitable and legal estates have merged and that the mortgage may be extinguished. It may also be that the subsequent action to quiet title may have the same effect. However, we believe that the First National Bank should properly release the aforementioned mortgage of record before the state accepts their deed.

In so far as the proposed deed is concerned, the form thereof and the description of the land meets our approval. However, we believe it would be preferable to change the party of the second part from "THE STATE OF NEW MEXICO" to read "THE GOVERNOR OF THE STATE OF NEW MEXICO AND HIS SUCCESSORS {\*130} IN OFFICE, IN TRUST FOR THE STATE OF NEW MEXICO AND THE PEOPLE THEREOF". The reason for this suggestion is that, should this land be sold in the future, we might have a possible grantor, otherwise it might be difficult to determine who may sign a deed for the State of New Mexico in the absence of some specific legislative enactment.

We are returning herewith the abstract of title, plat, and the proposed deed.

By FRED J. FEDERICI,

Asst. Atty. Gen.