

Opinion No. 42-4046

March 16, 1942

BY: EDWARD P. CHASE, Attorney General

TO: Mr. James C. Enloe Assistant District Attorney Socorro, New Mexico

{*171} Receipt is acknowledged of your letter dated March 13, 1942 in which you asked the following question:

"Will you please advise me whether or not it is necessary that tax sales certificates be actually issued for more than two years before a tax deed may be written on the same, as we have a problem in this county whereby tax sales certificates were not written at the time they should have been and now it is sought to go back and write these certificates and immediately issue the tax deeds thereon."

I assume that the county treasurer contemplates executing tax sales certificates as a basis for issuance of tax deeds to the State of New Mexico, and does not contemplate executing tax sales certificates after the period of redemption has expired, with the idea of assigning such tax sales certificates and issuing tax deeds to the assignees of such certificates.

The case of *Kershner vs. Sganzini*, 45 N.M. 195, 113 P. (2d) 576, is authority for the rule that, "Assignments of tax sales certificates must be made at or within the time prescribed by law". The time prescribed by law is the period of redemption, which is two years from the date of sale, rather than the date the certificate is written up. *Hood vs. Bond*, 42 N.M. 295, 77 P (2d) 180.

In the *Kershner* case above mentioned, although the question is not decided, it is implied that the failure to write up and file in the treasurer's office proper certificates of sale within a reasonable time after sale is not jurisdictional, but is a mere irregularity, curable by the curative statutes (Sections 24 and 25, Chapter 27, Laws of 1934.)

Section 1, Chapter 203, Laws of 1939, imposes the duty upon the county treasurer to issue tax deeds to the state immediately upon expiration of the period of redemption, when the certificates upon which such deeds are based are not assigned during the period of redemption.

In view of the authorities above cited, and of our statutes, I am of the opinion that where tax sales certificates have not been assigned, the county treasurer should write up certificates, regardless of the fact that more than two years have elapsed since the date of sale of the property for delinquent taxes, and that immediately thereafter, or as soon as is practicable, tax deeds based upon such tax sales certificates should be executed to the State of New Mexico.

Trusting that the foregoing sufficiently answers your inquiry, I am,

By C. C. McCULLOH,

Asst. Atty. General