

Opinion No. 244.

**Taxation—State Lands—Contracts—
Delinquent Taxes on Reinstatement
of Contract.**

HELD: 1. When the purchaser of state lands forfeits his interest therein because of his failure to pay past due installments of the purchase price within the statutory period, the state becomes once again the absolute owner of such lands and the lands become absolved from further liability for taxes previously assessed against the interest therein of the delinquent purchaser the moment the state again becomes the absolute owner thereof.

2. The delinquent purchaser of state lands who invokes the benefit of Section 89, Chapter 60, Laws of 1927, as amended by Chapter 101, Laws of 1929, is not required to pay any taxes except the taxes levied against his interest for the year in which reinstatement is made, if on or before

the first Monday of March of that year, and subsequent years as they follow.

3. The delinquent purchaser of state lands who invokes the benefit of Section 2 of Chapter 143, Laws of 1935, must pay the taxes for the years that correspond with the years for which installments of the purchase price have been paid, if such taxes have not been already paid, and the taxes levied against his interest for the year in which reinstatement is made, if on or before the first Monday of March of that year, and subsequent years as they follow.

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You and other public officers have requested an opinion from us on the taxable status of private interests in state lands the certificate of purchase of which, after having been cancelled, has been reinstated by the State Board of Land Commissioners. In order to present the situation in really understandable form it will be helpful to set forth at length the statutes which are directly applicable.

Sections 88, 92 and 94 of Chapter 60, Laws of 1927, provide:

"Section 88. Whenever any purchaser of state land hereafter sold, or the assignee, shall default for a period of thirty (30) days or more in the payment of any of the installments due on his certificate of purchase, the certificate shall be subject to cancellation and the board shall cause to be mailed to him at his last known post office address a notice of default and pending cancellation which notice shall give him sixty (60) additional days from the date of mailing such notice in which to make payment of the delinquent installment or installments with penalty interest. If he fails to make such payment within that period the certificate of purchase shall from that date and without further notice be null and void, the duplicate of the certificate in the office of the commissioner shall be cancelled and the land under the certificate shall revert to the state and such land

together with all buildings, fences and other improvements thereon shall become the property of the state to the same extent as other state lands and shall be open to lease and sale."

"Section 92. The interest of the purchaser in state lands shall be subject to taxation to the full extent of such interest. The assessor shall assess the purchaser for such percentage of the full and true value of the land as the initial payment on the land and all installments of principal due on the certificate of purchase prior to the first Monday of March of the year for which the land is assessed is of the full purchase price of the land. * * * The improvements on the land shall be assessed and taxed as other improvements on farm lands."

"Section 94. In case any lands sold under the provisions of this act shall revert to the State, for any cause whatsoever, the commissioner of State lands shall notify the assessor and the county treasurer of the county in which the land is situated, and upon the receipt of such notice it shall be the duty of the assessor to cancel any assessment of said land for that year, and of the county treasurer to cancel all taxes remaining unpaid against the land for that and all previous years."

Section 89 of the same Chapter, as amended by Section 1 of Chapter 101, Laws of 1929, provides: "In all cases where a certificate of purchase of State lands has been cancelled and annulled as provided by law, and the lands under such certificate have not been resold to another purchaser, the State Board of Land Commissioners may in its discretion reinstate the cancelled certificate upon proper application made in writing by the original purchaser or his heirs, assigns, or devisees, filed within one year and six months from such cancellation, and payment of all delinquent installments of principal and interest on the certificate together with penalty interest at the rate of six per centum (6%) per annum upon all such delinquent installments from the date due until the date of actual payment, and the furnishing of proof from the County Treasurer showing that there are no tax liens against the land."

Sections 2 and 3 of Chapter 143,

Laws of 1935, provides: "Section 2. Whenever a certificate of purchase of State lands embracing lands received from the United States through the Enabling Act or embracing lands acquired by the State through its farm mortgages has been cancelled and annulled as provided by law, the owner, his assignee, heir or devisee may within three years after the cancellation and annulment of such certificate of purchase make application to the State Board of Land Commissioners for the reinstatement of such certificate, in whole or in part, and if the lands have not been resold, the board may in its discretion reinstate such certificate in the following manner:

"The whole certificate may be reinstated by the payment of the oldest delinquent installment on such certificate together with interest thereon as now provided; or the certificate may be reinstated as to that part of the land on which the owner has erected a dwelling house with or without additional buildings worth in the aggregate not less than Two Hundred Fifty Dollars (\$250.00) at the present time if such partial reinstatement will not materially impair the salableness of the remainder of the land under the cancelled certificate of purchase. The partial reinstatement shall embrace not less than eighty (80) acres of the land under such cancelled certificate according to government subdivisions; and in the case of such partial reinstatement of a certificate of purchase of mortgage lands, the applicant shall make full payment of all the delinquent installments upon the said certificate with interest thereon as now provided in the proportion that the actual value of the acreage to be embraced in the partial reinstatement together with the value of the improvements thereon bears to the value of the total area of land in the cancelled certificate together with the improvements thereon. Before the certificate of purchase shall be reinstated, in whole or in part, evidence must be produced showing that the taxes on the said lands have been paid at least as far as the installments on the certificate of purchase and in proportions to the acreage embraced in the reinstatement thereof, have been paid to the State."

"Section 3. This Act shall be regarded strictly as emergency legislation; and shall not repeal any existing statutes relating to state lands but shall be regarded as giving to the State Board of Land Commissioners and to purchasers of state lands the additional rights herein enumerated."

When the purchaser of state lands forfeits his interest therein because of his failure to pay past due installments of the purchase price within the statutory period the state, under the provisions of Section 88, becomes once again the absolute owner of such lands.

Section 2 of Article XII of the Constitution declares that "the property of the United States, the state, counties, cities, towns, school districts, municipal corporations and public libraries shall be exempt from taxation." Section 1998, Revised Codes 1921, as amended by Section 1 of Chapter 98, Laws of 1931, is to the same effect.

There cannot be any doubt that under the mandate of this constitutional provision the lands in question were absolved from further liability for taxes previously assessed against the interest therein of the delinquent purchaser the moment the state again became the absolute owner thereof. Section 94 but carries out the intent of the framers of the Constitution in that regard. (61 C. J. 418, 945; *State v. Gaylon*, 7 Pac. (2d) 484; *State v. Locke*, 219 Pac. 790; *City of Harlan v. Blair*, 64 S. W. (2d) 434.) See, also, *State v. Lewis and Clark County*, 84 Mont. 200, and *State v. Lewis and Clark County*, 84 Mont. 204.

Section 4 of Article VII of the Constitution of Idaho is like our Section 2 quoted above. In the case of *State v. Minidoka County*, 298 Pac. 366, the Supreme Court of Idaho said: "When the state obtains complete unconditional title to lands pursuant to the foreclosure of school fund mortgages, the title is freed by Article VII, Section 4 of the Constitution, from all past taxes and liens therefor, and all such liens on the tax records become null and should be cancelled."

If, then, the delinquent purchaser is qualified to proceed and does proceed under the provisions of Section 89, as amended, he is required to pay

to the State Board of Land Commissioners all delinquent installments of principal and interest on his certificate, together with a penalty of six per cent per annum upon such installments from the date they became due until the date of payment, and to furnish proof through the County Treasurer that there are no tax liens against the lands.

If, on the other hand, the delinquent purchaser is qualified to proceed and does proceed under the provisions of Section 2 he is required only to pay to the State Board of Land Commissioners the senior delinquent installment on his certificate, together with the interest due on such installment at the date of payment thereof, and to produce evidence showing that the taxes on the lands have been paid at least as far in point of time as the installments have been paid.

Requiring the delinquent purchaser who proceeds under Section 89 to furnish proof that there are no tax liens against the lands would seem to be an idle act. As has already been pointed out when the lands reverted to the state all tax liens were wiped out.

The delinquent purchaser who proceeds under Section 2 and who failed to pay the taxes levied against his interest in the lands before forfeiture thereof must, before his certificate of purchase can be reinstated, pay the taxes for such years as correspond with the years for which the installments of purchase price have been paid. More he is not required to do.

It is proper to add here that a valid assessment is a prerequisite to the levying of a valid tax. (61 C. J. 619; State v. State Board of Equalization, 67 Mont. 340.)

It is also proper to add that the property in question is not property that has escaped assessment such as is covered by Section 11 of Chapter 3, Laws of 1923.

Our conclusion is, therefore, that the delinquent purchaser who invokes the benefit of Section 89 is not required to pay any taxes except the taxes levied against his interest for the year in which reinstatement is made, if on or before the first Monday of March of that year, and sub-

sequent years as they follow, and that the delinquent purchaser who invokes the benefit of Section 2 must pay the taxes for the years that correspond with the years for which installments of the purchase price have been paid, if such taxes have not already been paid, and the taxes levied against his interest for the year in which reinstatement is made, if on or before the first Monday of March of that year, and subsequent years as they follow. That these statutes may not be as complete as they should be or may appear to unduly favor delinquent purchasers of state lands is a matter for legislative concern. Administrative officers can do no more than obey them to the best of their ability.

(Note: See also Vol. 15, Opinion No. 556, p. 385.)