

September 17, 1935.

Hon. Virgil W. Chandler,
County Attorney,
Florence, Arizona.

Dear Mr. Chandler:

Your letter of August 28th requesting an opinion from the Attorney General as to whether or not your Board of Supervisors may legally compromise the amount of taxes due on property after such property has been sold to the State of Arizona for taxes under the provisions of Section 36, Chapter 103, Laws of 1931 (Sec. 3088a10 Revised Code of Arizona Supplement 1934), has been referred to me for reply.

We have made a careful study of the decisions regarding the compromise of taxes and have failed to find any decisions that are in point. It appears that the statute in question was adopted from Colorado, but the same, to our knowledge, has never been interpreted by the Supreme Court of Colorado.

Failing to find decisions which may guide us in an interpretation of the statute in question, it will therefore be necessary to interpret the meaning and effect of Section 36 by construing it together with other sections of Chapter 103, Laws of 1931.

The section in question (Sec. 36, supra) provides:

***COMPROMISE PAYMENT OF BACK TAXES:** Whenever it shall appear to the board of supervisors that any real estate contained in said BACK TAX BOOK is not worth the amount of taxes, interest, costs, penalties due thereon, as charged in said BACK TAX BOOK, or that the same WOULD NOT SELL FOR THAT AMOUNT, said board may compromise said taxes with the OWNER, and upon payment to the county treasurer of the amount agreed upon the board shall issue a CERTIFICATE OF REDEMPTION releasing said lands from the LIEN of said taxes. The board shall order the amount so paid distributed to the various funds to which said taxes are due, in the proportion that the amount received bears to the whole amount charged against such tract or lot. The board may order that no action be brought on any specified tract, if in its judgment such tract is not worth or will not bring an amount equal to the taxes, interest and costs, and may direct that any tax or fund, the validity of which is being contested in the courts be omitted from any action brought hereunder, but the judgment

rendered in an action where such tax is omitted, shall not bar or effect any subsequent action for such tax so omitted." (capitals and underscoring ours)

Section 17 of said chapter, (Sec. 3063q, R.C.S. 1934) provides that the County Treasurer shall keep a back tax book in which a record of all delinquencies are kept. From this book all property upon which taxes are delinquent is put up for sale. Section 20, provides for the sale of such property, and the issuance of a certificate of purchase, to the State of Arizona. Section 31 provides for the transfer of a certificate of purchase held by the State of Arizona to any person who shall pay the amount specified. Section 37 provides for redemption from the tax sale. Sections 45 and 46 provides for actions for foreclosure of the right of redemption and judgment for deed at the expiration of three years from the sale. It will be noted that the State of Arizona is specifically included within the provisions of these two sections. Section 49 provides for the issuance of a deed to such property at the end of five years to the person or persons, including the State of Arizona, holding the certificate of purchase on such property, where such person or persons, including the State of Arizona, have not brought an action for such deed as provided in Sections 45 and 46 supra. Section 52 provides for the listing of property upon which the State of Arizona holds a tax deed and Section 53 provides for the sale of such property by the board of supervisors.

Construing these sections together we are of the opinion that Section 36, relating to compromise settlement, confers upon the Board of Supervisors the power to make such compromise settlements only prior to any sale of such property, and not after the same has been sold for taxes. It is our opinion that the legislature has provided for an election of remedies which a board of supervisors may elect to take. They may either sell such property for taxes at a public sale, or, they may compromise the amount of the taxes due if they believe the property would not bring the amount of taxes, interest, costs, and penalties due thereon as charged in the back tax book, and issue a certificate of redemption releasing such property from the tax lien.

In the instant case we are of the opinion that your board of supervisors does not have the power or authority to compromise the amounts due for the reason that this property has been sold to the State of Arizona. It is our opinion that the only remedy the owner has is, either pay up the delinquent amounts together with the amounts that have accrued since the sale thereof, and secure a certificate of redemption, or, purchase the same when the property is sold under the provisions of Section 53, supra.

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We have carefully read and considered the cases submitted to us by Hon. Harry J. Valentine of Superior, but we are of the opinion that these cases are not controlling by reason of our statute being different from the statutes construed in said cases.

For the reasons given it is the opinion of the Attorney General that your Board of Supervisors has not power or authority to compromise taxes upon property which has been sold to the State of Arizona at a tax sale.

Very truly yours,

JOHN L. SULLIVAN,
Attorney General.

ELMER C. COKER,
Assistant.