

**OPINION  
43-107**

June 3, 1943 (OPINION)

SHERIFF

RE: Deeds Issued When

This is in reply to your letter of recent date in which you request the opinion of this office on the following state of facts:

The Board of University and Schools Lands foreclosed a mortgage and at the sale received the usual sheriff's certificate of sale. This certificate was recorded. Thereafter, it was assigned by the state and the assignment was recorded. The original certificate of sale was misplaced or lost. The holder of the recorded assignment has a certified copy of the original certificate of sale, and is now demanding a sheriff's deed. The sheriff refuses to issue a deed unless he is indemnified, presumably, because the person making the demand did not have the original certificate of sale.

Section 8106 of the Compiled Laws provides that:

"At the expiration of the time for the redemption of such property, if the same is not redeemed the person or officer making the sale, or his successor in office, or other officer appointed by the court must make to the purchaser, HIS HEIRS OR ASSIGNS, OR TO ANY PERSON WHO HAS ACQUIRED THE TITLE OF SUCH PURCHASER BY REDEMPTION OR OTHERWISE A DEED OR DEEDS OF SUCH PROPERTY."

Said section 8106 relates to foreclosures had by action.

Section 8087 applies to foreclosures by advertisement and has practically the same provisions.

Since the person demanding the deed is the holder of the assignment of the original certificate of sale, and since both the certificate of sale and the assignment thereof are of record, I am of the opinion that he is entitled to a sheriff's deed, even though the original certificate of sale may be lost or misplaced. The records show that the original certificate has been assigned, and the holder of the assignment is now demanding a sheriff's deed. Under the statutes quoted, if no redemption is made, the purchaser, his heirs or assigns or any person who has acquired the title of such purchaser by redemption or otherwise is entitled to a sheriff's deed. The only possible contingency is that there may be another assignment, but even though such may be the case, in the absence of any knowledge of such possible outstanding assignment or other instruments that might be connected

therewith, the sheriff can safely issue a deed to the person who has possession of the assignment of the certificate of sale and who is the assignee named therein.

ALVIN C. STRUTZ  
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