VOLUME NO. 43 OPINION NO. 19

COUNTIES - Priority of delinquent tax liens over security interests in personal property;
LIENS - Priority of delinquent tax liens over security interests in personal property;
PROPERTY, PERSONAL - Priority of delinquent tax liens over security interests in personal property;
REVENUE, DEPARTMENT OF - Priority of delinquent tax liens over security interests in personal property;
TAXATION AND REVENUE - Priority of delinquent tax liens over security interests in personal property;
MONTANA CODE ANNOTATED - Section 15-16-402(1);
OPINIONS OF THE ATTORNEY GENERAL - 42 Op. Att'y Gen. No. 95 (1988), 40 Op. Att'y Gen. No. 80 (1984), 38 Op. Att'y Gen. No. 6 (1979).

HELD: When personal property is subject to a delinquent tax lien, a county is not required to tender payment to a person having a security interest in the personal property before seizing and selling such property.

June 1, 1989

J. Allen Bradshaw
Granite County Attorney
P.O. Box 490
Philipsburg MT 59858

Dear Mr. Bradshaw:

You have requested my opinion on a question I have phrased as follows:

> When personal property is subject to a delinquent tax lien, is a county required to tender payment to a person having a security interest in the personal property before seizing and selling the property?

It is my opinion that counties are not required to tender payment to such secured parties before selling personal property subject to delinquent tax liens because tax liens on personal property are superior to all other liens.

Montana law expressly confers priority of tax liens on personal property. Section 15-16-402(1), MCA, provides:

> Every tax due upon personal property is a prior lien upon any or all of such property, which lien shall have precedence over any other lien, claim, or demand upon such property[.]

This statute, which has substantially the same pertinent language now as it had in 1963, was discussed in United States v. Christensen, 218 F. Supp. 722 (D. Mont. 1963). That court concluded:

> "It cannot be inferred that the lien for personal taxes *** was intended to be subordinate to all prior private liens because the legislature failed to say that it should be deemed paramount. On the contrary, considering the character of the obligation and the dignity usually accorded to such liens, in public estimation, and above all, considering the necessity which exists for giving them priority in order that the public revenues may be promptly and faithfully collected, we conclude that the inference should be that the lien was intended by the legislature to be superior to all liens, prior or subsequent, claimed by individuals, and that nothing should be allowed to overcome this inference but a plain expression of a different purpose found in the statute itself."

United States v. Christensen, 218 F. Supp. at 726-27, citing State ex rel. Malott v. Board of Commissioners, 89 Mont. 37 at 77-78, 296 P. 1 at 12 (1930). See also 42 Op. Att'y Gen. No. 95 (1988), 40 Op. Att'y Gen. No. 80 at 320 (1984), 38 Op. Att'y Gen. No. 6 at 16 (1979).

THEREFORE, IT IS MY OPINION:

> When personal property is subject to a delinquent tax lien, a county is not required to tender payment to a person having a security interest in the personal property before seizing and selling such property.

Sincerely,

MARC RACICOT
Attorney General