New Counties, Collection of Taxes by. Taxes, What Part Collected by New County. "Current Year", Meaning of in New County Law.

The law relating to creation of new counties and the manner of collecting taxes by the old and the new county, and the term "current year" examined and construed.

March 4, 1916.

Hon. N. W. Bunston,
County Attorney,
Hardin, Montana.

Dear Sir:

I am in receipt of your letter of the 24th ultimo, submitting the question

> as to what portion of the taxes levied by a county should be collected by a new county, and incidentally, as to the meaning of the phrase "current year", as used in Section 9, Chapter 112, Session Laws of 1911?

It appears from your statement that Big Horn County was created on the 6th day of January, 1913, from portions of Yellowstone and Rosebud counties.

It is necessary to make brief reference to the manner of enforcing collection of taxes on real estate as prescribed in the Codes in order to obtain a clear understanding of the application of said section.

"On or beifore the last Monday of each year, the county treasurer must publish the delinquent" tax list (Sec. 2629, R. C.). This notice must be published for three weeks (Sec. 2631), and must designate the time and place of sale (Sec. 2632), which must not be less than twenty-one, nor more than twenty-eight days (Sec. 2633). If there is no purchaser, the county treasurer must make an entry "sold to the county" (Sec. 2638), and a certificate must be signed by the treasurer, and a copy delivered to the purchaser, and a copy filed in the office of the county clerk (Sec. 2642). On filing the certificate, the lien of the state vests in the purchaser, and is only divested by the payment of the purchase money and the percent required by law (Section 2644). The property may be redeemed at any time within thirty-six months (Sec. 2645). It appears, therefore, from the provisions of these sections that when property is sold to the county and a tax sale certificate issued, the county becomes the real owner of the property, and its title thereto is only divested by redemption by the owner or party interested, and if the property is not redeemed, the county may take a dee to it, thus cutting off the right of redemption (Sec. 2650). In either event, the county is recognized as the owner of the property from the time of the sale. The taxes due have in effect been collected, by reason of the sale of the property, and from that time forward the owner or party interested is classed in the law as a redemptioner, rather than as a taxpayer.

The term "current year", as used in Section 9, Chapter 112, Laws of 1911, clearly has reference to uncollected taxes for the year in which the new county is created. It cannot have reference to taxes already collected, for such taxes pass in as cash, and are taken into consideration in the settlement between the new and old counties.

Opinions Attorney General, 1910-12, p. 418.

Nor can it have reference to outstanding tax sale certificates, issued to the old county, for the taxes on such property have already been collected by the sale of the property, and in lieu of the cash the county holds the tax sale certificate; but as to taxes which have not been collocted, either in cash or by the sale of the property, the officials of the new county take up the work of collecting the taxes exactly where the officials of the old county lay it down, and all proceedings had by the officers of the old county relative to the collection of taxes, are by operation of law regarded as having been taken by officers of the new county. Hence, as to taxes uncollected, the transition from the officers of the old county to the officers of the new county is just as complete and effective as though all the officers of the old county had resigned and new officers had been appointed in their places.

But Section 7 of said Chapter 112, provides, among other things, that in the adjustment of the indebtedness and division of property, the value of the county property situate in the new county shall be ascertained and shall be added to the indebtedness found due from the new county to the old county, and when such settlement is made, then the property of the old county situate in he new county becomes the property of the new county. Hence, it follows, as a matter of law, that all property owned by the old county at the time of the division, and situate in the new county, passes over to and becomes the property of the new county. The phrase used in the law is "any property". This includes property, the title to which is evidenced by tax sale certificates, as well as that which is evidenced by deeds.

The new county having in the settlement, as provided in Section 7 of said Chapter, paid for all the property belonging to the old county, situate within the new county, is entitled to become the owner thereof, and does become such owner by operation of law, and the tax sale certificates owned by the old county should pass over to the new county, and the redemptioner should redeem by making the payment to the treasurer of the new county.

Yours very truly,

J. B. POINDEXTER,

Attorney General.