

Taxation—Personal Property—Whether Lien on Real Estate Sold Under Mortgage Foreclosure Prior to the First Monday in March.

The lien of personal property tax of a mortgagor does not attach to real estate, the foreclosure sale of which was had prior to the first Monday of March of the year upon which the personal property tax was levied.

William L. Bullock, Esq.,
County Attorney, Pondera County,
Conrad, Montana.

My dear Mr. Bullock:

You have requested my opinion on the following question:

“Does the tax on a mortgagor’s personal property become a lien on real estate which was sold under mortgage fore-

closure prior to the first Monday of March on which the personal property tax was levied?"

As I understand the facts in this case, the only real estate owned, or that had been owned, by the mortgagor was sold under mortgage foreclosure prior to March 1, 1921, and on the first Monday of March, 1921, said mortgagor owned no other real estate or interest in real estate except his equity of redemption in the real estate so sold. Therefore, the question becomes: Does the personal property tax become a lien on real estate in which the person assessed has a right of redemption?

Section 2601, Revised Codes of 1907, reads as follows:

"Every tax due upon personal property is a lien upon the real property of the owner thereof, from and after twelve o'clock m., of the first Monday in March in each year."

When a mortgage is foreclosed and the property thereunder sold, the effect is to vest in the purchaser at such foreclosure sale a complete legal title to the premises, subject however to the right of redemption of the mortgagor, which right must be exercised within one year after the date of such sale; and on the failure of such redemption, the title to the property becomes absolute in the purchaser.

Secs. 6838 and 6839, Revised Codes of 1907;

27 Cyc. 1791, and cases cited.

"It (the right of redemption) is not property in any sense of the term, but a bare personal privilege. It is purely of statutory origin, and can only be exercised by the persons named in the statute, in the instances mentioned therein, and within the time and upon the conditions prescribed."

Banking Corp. of Montana v. Hein, 52 Mont. 241.

Under the above rule the mortgagor ceased to have any property right in the real estate on the day of the foreclosure sale; hence, the lien of his personal property tax could not attach thereto.

A question very similar to this was before the Attorney General in 1914, and in passing upon it, Attorney General Kelly said:

"In case of mortgage foreclosure and sale of real estate, title of the mortgagor is divested at the time of the sale of the real estate, and no lien for taxes on the personalty of the mortgagor attaches to the real estate after that time unless there is redemption, but the lien already attached continues until the taxes are paid, or the land sold."

Vol. 5, Opinions Attorney General, 642.

It is, therefore, my opinion that the lien of the personal property tax of a mortgagor does not attach to the real estate, the foreclosure sale of which was had prior to the first Monday of March.

Very truly yours,

WELLINGTON D. RANKIN,

Attorney General.