

County Treasurer—Discretion of in Proceeding Against Personal Property for Taxes When There is Real Estate Liable for Same.

The County Treasurer has no discretion to proceed against personal property for the enforcement of the collection of taxes levied against the owner until after the receipt of the report of the Assessor as provided in Section 2683 of the Revised Codes of 1907.

Upon receiving the report of the Assessor as provided in the above mentioned section, the County Treasurer may proceed to seize and sell personal property as provided in Section 2684 of the Revised Codes, notwithstanding that real estate is also liable therefor.

Board of County Commissioners,
Glasgow, Montana.

Gentlemen:

You have inquired whether the County Treasurer is authorized to proceed against personal property for delinquent taxes where there is real estate that may satisfy the taxes, and whether the County Treasurer has discretionary powers in choosing to enforce the collection of taxes in case both real and personal property are liable therefor.

Section 2601 of the Revised Codes of 1907 provides that taxes due upon personal property are a lien upon the real property of the owner thereof from and after 12 o'clock m. of the first Monday of March in each year.

Section 2657 reads as follows:

"The treasurer may, after the first Monday in February in each year, in each of the counties of this state, collect the taxes due on personal property, except when real estate is liable therefor, by seizure and sale of any personal property owned by the delinquent."

Sections 2683 and 2684 of the Revised Codes of 1907 read as follows:

2683. "It shall be the duty of the Assessor, upon discovering any personal property in the county, the taxes upon which are not in his opinion a lien upon real property sufficient to secure the payment of such taxes, to immediately make a report to the Treasurer setting forth the nature, amount and assessed valuation of the said such personal property, where the same is located and the name and address of the owner, claimant or other person in possession of the same.

2684. "The County Treasurer must collect the taxes on all personal property and in the case provided for in the preceding section, it shall be the duty of the treasurer immediately upon receipt of such report from the Assessor, to notify the person or persons against whom the tax is assessed, that the amount of such tax is due and payable at the County Treasurer's office. At the time of receiving the Assessor's report, or at any time before November 1st, the Treasurer may collect the taxes by seizure and sale of any personal property owned by the person or persons against whom the tax is assessed. The County Treasurer and his sureties are liable on his official bond for all taxes on personal property within the county which through his wilful failure or neglect is uncollected."

By a recent decision of our Supreme Court in the case of Averill Machinery Co. v. Freebury, decided May 4, 1921, it was held that Section 2657, supra, is superseded by Sections 2683 and 2684.

Sections 2683 and 2684, make provision for proceeding against personalty even where there may be realty upon which such tax is a lien, when, in the opinion of the Assessor, the real property is not sufficient and the Assessor so reports to the County Treasurer. This places the discretion as to whether the real property is sufficient to satisfy the tax with the Assessor, and Section 2684 gives a certain latitude to the Treasurer in proceeding to enforce the collection by providing that at any time after the Treasurer receives the Assessor's report, and before November 1st, the Treasurer may collect the tax by seizure and sale of any personal property owned by the person or persons against whom the tax is assessed.

It is, therefore, my opinion that until the Assessor has reported to the Treasurer as provided by Section 2683, the Treasurer has no discretion to proceed against personal property for the enforcement of the collection of taxes levied against the owner, but that upon receiving the report of the Assessor as provided in Section 2683, the County Treasurer may proceed to seize and sell personal property as provided in Section 2684, notwithstanding that real estate is also liable therefor.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.