

**Personal Property Tax—How Collected—When a Lien Upon Real Estate.**

Personal property cannot be held for the tax against the property when there is real estate in existence upon which the personal property tax is a lien.

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My dear Mr. Gerye:

You have submitted the following statement of facts:

In April, 1921, without any notice from the Assessor, the County Treasurer served notice on the Sheriff that certain taxes were due against live stock within the county; the

Sheriff was about to sell the live stock on chattel mortgage foreclosure, the Sheriff proceeded to sell the live stock, the mortgagee becoming the purchaser, the Sheriff at the time informing the mortgagee and purchaser of the claim of Treasure County for taxes; the mortgagee and purchaser agreed to remit to the Sheriff the amount of the tax together with costs of sale, whereupon the Sheriff delivered him the property; the purchaser has since refused to pay the taxes to the Sheriff or to the Treasurer upon the ground that the mortgagor of the above mortgage owned land which is liable for the tax; the mortgagor of the personal property did in fact own lands in Treasure County at the time, and on the first Monday in March, 1921, which lands have since been foreclosed.

Your inquiry is, "Is the fact that the land may become security for the payment of the personal property tax, in itself a prohibition against holding the personal property therefor?"

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."

From the foregoing it is to be noted that the only authority given a County Treasurer to seize personal property for taxes is when he is notified by the Assessor that in his opinion they are not a lien upon real property sufficient to secure the payment of such taxes. Section 2657 of the Revised Codes of 1907 was held by the Supreme Court, in the case of *Averill Machinery Co. v. Freebury Bros.*, 59 Mont. 594, to be superseded by Sections 2683 and 2684 above cited.

In *Walsh v. Croft*, 27 Mont. 407, it was held that no tax lien attaches to personalty until seizure of the personalty by the County Treasurer.

At the time of the Sheriff's sale of the live stock in question, the County Treasurer had, therefore, under the statement of facts submitted, no authority to seize the live stock for taxes or to hold the same. The real estate in question was at the time liable for the taxes, and there was neither a lien upon the live stock nor authority in the County Treasurer to establish such lien by distraint.

It is, therefore, my opinion that, the personal property tax being a lien upon real property sufficient to secure the payment thereof, the County Treasurer is precluded from holding the personal property therefor, and that neither he nor the Sheriff could legally assert any claim against the livestock for the taxes or hold the same for such taxes at the time of said sale.

Very truly yours,

WELLINGTON D. RANKIN,

Attorney General.