Personal Property Tax—Personal Property Tax of Mortgagor Not a Lien Upon Property Sold Under Mortgage Foreclosure—Personal Property Tax of Original Owner a Lien Upon Real Property Sold for Delinquent Taxes.

The personal property taxes of the mortgagor of real property are not a lien upon real property sold under mortgage foreclosure prior to the first Monday of March.

The personal property taxes of the original owner of real estate are a lien upon the real estate of the original owner sold for delinquent taxes. The title to the real property does not vest in the purchaser at a tax sale until after the expiration of the period of redemption.

Edgar J. Baker, Esq.,
County Attorney,
Lewistown, Montana.

My dear Mr. Baker:

You have submitted to this office the following question and request an opinion thereon:

> "A mortgagee forecloses his mortgage and receives the Sheriff's certificate of sale prior to the first Monday of March, 1922. The real estate and certain personal property are assessed against the mortgagor as of the first Monday in March, 1922. Does the personal property tax become a lien upon the land for the payment of which the mortgagee is liable?"

Section 2153 of the Revised Codes of 1921 provides:

> "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."

The answer to this question, therefore, depends upon who is the owner of the property on the first Monday in March.

Section 9441 of the Revised Codes of 1921, referring to the sale of real property under execution, provides, in part, as follows:

> "Upon a sale of real property, the purchaser is substituted to and acquires the right, title, interest, and claim of the judgment debtor thereto."

While the judgment debtor has the right to redeem from the execution sale, this is held to be merely a personal right. (Hamilton v. Hamilton, 51 Mont. 509.)

Section 9443, Revised Codes of 1921, provides in part:

> "The judgment debtor, * * * may redeem the property from the purchaser any time within one year after the sale, on paying the purchaser the amount of his purchase, with one per cent. per month thereon in addition, up to the

> time of redemption, together with the amount of any assessment or taxes which the purchaser may have paid thereon after purchase, and interest on such amount;"

It is apparent from these provisions of the statute that on execution sale the certificate of sale passes the title to the purchaser, and hence the taxes of the former owner on personal property do not attach as a lien when the execution sale is made prior to the first Monday in March.

You have also asked the following question:

> A person purchases land for the current delinquent taxes in January, 1922. Does he become liable for the payment of taxes on personal property assessed against the delinquent taxpayer for the same year.

Section 2197, Revised Codes of 1921, provides:

> "On filing the certificate (tax sale certificate) with the county clerk, the lien of the state vests in the purchaser, and is only divested by the payment to him or to the county treasurer for his use of the purchase money and one per cent. additional for each month that elapses from the date of the sale until redeemed."

Section 2201 provides that redemption from the tax sale may be made by the owner at any time within thirty-six months from the date of the purchase, or at any time prior to the giving of notice of the application for deed.

Section 2213 provides the form of tax deed, while Section 2215 provides:

> "The deed conveys to the grantee the absolute title to the lands described therein, as of the date of the expiration of the period for redemption, free of all incumbrances, except the lien for taxes which may have attached subsequent to the sale;"

It is apparent from these provisions of the statute that the title does not pass to the purchaser of a tax sale certificate, but that he only acquires the lien of the State pending the thirty-six months within which the property may be redeemed, and that title only passes upon the execution of a deed after this period upon giving notice of application for the deed. This being true, it necessarily follows that the lien of personal property taxes of the original owner of the land provided for in Section 2153, attaches to the land during the thirty-six months' period after the date of the tax sale certificate.

It is my opinion, therefore, that the County Treasurer must accept the taxes on the real estate without demanding the personal property tax assessed against the former owner, as to the property involved in your first question; but, as to that involved in your second question, he must be paid the tax on the real estate as well as that assessed on personal property belonging to the owner.

Very truly yours,

WELLINGTON D. RANKIN,

Attorney General.