Penalties—Taxes—Delinquent Taxes—Repeal—Revival.

The repeal of chapter 63, session laws of 1923, by chapter 77, session laws 1925, restores the former statutory provisions suspended by chapter 63 notwithstanding the provisions of section 96, R. C. M. 1921.

Neil McFarlan, Esq., July 13, 1925.
County Treasurer,
Wolf Point, Montana.

My dear Mr. McFarlan:

Your letter relative to the effect of repealing chapter 63 of the session laws of 1923 by chapter 77 of the session laws of 1925, has been received.

You also wish to know what penalties should be charged under chapter 96 of the session laws of 1923.

This office has held that the penalties on delinquent taxes under chapter 96 is 5 per cent.

The question which you have asked with regard to the repeal of chapter 63 is whether this repeal restores the former provision of the statute relative to penalties. Chapter 63 did not expressly repeal any

existing statute. It merely provided that in a certain class of cases, to-wit, those cases where property had been sold for taxes to any county and no assignments of a certificate of sale had been made by the county, that any person having an interest therein should be permitted to redeem the property by paying the original tax plus 7 per cent. It did not affect the penalties in those cases where the certificate of sale had been assigned, or where the sale was originally made to a purchaser other than the county.

Section 96, R. C. M. 1921, provides:

> "No act or part of an act, repealed by another act of the legislative assembly, is revived by the repeal of the repealing act without express words reviving such repealed act or part of an act."

Chapter 77, laws of 1925, contains no provision reviving the repealed act. Section 96 abrogated the common law rule with respect to statutes repealing a repealed statute. However, there is a well defined exception to this statutory provision in cases where the statute repealed did not entirely abrogate an existing statute. The rule is stated in Ann. Cas. 1918 B. page 284, as follows:

> "A statute abrogating the common law rule as to the revival of an act by the repeal of the repealing act, has no application where the effect of an act is not to abrogate entirely a former act, but merely to withdraw from the operation of the earlier act a portion of the cases included within its terms, leaving the earlier act still in force except as to the cases specifically provided for by the later one. Under such circumstances the repeal of the later act has the effect of again bringing the cases provided for by it within the operation of the original act." (Citing a number of cases.)

In the case of Smith vs. Hoyt, 14 Wis. 252, it appeared that a general statute required the defendant in civil actions to answer in twenty days. Later an act was adopted giving the defendant in foreclosure cases six months in which to answer. It was contended that the first statute was repealed by the later act as to foreclosure suits, and that on the repeal of that act the statute abrogated the common law rule of revival preventing the revival of the statute first named.

In answer to this contention the court, after declaring that the later act did not strictly repeal the first or general statute but merely excepted a class of cases from its operation, said:

> "That being so, where the statute creating the exception is repealed, the general statute which was in force all the time would then be applicable to all cases according to its terms. And this would be no violation of the rule of construction before referred to, that the repeal of a repealing act should not revive the act repealed. The act of 1858 was equivalent to a proviso attached to the general rule, that it should not be applicable to

foreclosure defendants. But if a proviso creating an exception to the general terms of a statute should be repealed, courts would be afterwards bound to give effect to it according to those general terms, as though the proviso had never existed. And this could not be said to revive a repealed statute. The rule against this relates to cases of absolute repeal, and not to cases where a statute is left in force, and all that is done in the way of repeal is to except certain cases from its operation. In such cases, the statute does not need to be revived, for it remains in force, and the exception being taken away, the statute is afterwards to be applied without the exception."

It is, therefore, my opinion that the repeal of chapter 63 of the session laws of 1923 by chapter 77 of the session laws of 1925, restored the former statutory provision as to penalties in all cases including those where the county had become the purchaser and no assignment of the certificate had been made.

Very truly yours,

L. A. FOOT,
Attorney General.