

Opinion No. 342.

**Taxation—Redemption From Tax
Sale—Courts—Action for Tax
Deed, Costs of Redemp-
tion, Attorneys Fee.**

HELD: One who redeems, under the provisions of Section 2215.5, R. C. M. 1935, land from a tax sale is not required to pay plaintiff's attorney fee.

August 12, 1936.

Mr. Philip Savaresy
Deputy County Attorney
Billings, Montana

We have your letter of August 1,
from which we quote:

"An action has been instituted in the District Court for a tax deed, and the defendant, who was entitled to redeem under the provisions of 2215.5 pays to the County Treasurer the amount of delinquent taxes and penalties, with interest thereon at eight per cent, and also the costs of the action, and demands a certificate of redemption from the County Treasurer, which he issued. The redemptioner will not pay any attorney fees, claiming that an attorney fee as provided in 2215.6 can only be allowed when a judgment is rendered.

"What this office would like to know is whether or not the redemptioner who proceeds under Section 2215.5, and redeems by paying to the county treasurer, is also required to pay an attorney fee."

The pertinent parts of the two sections involved are: "* * * Any defendant to said action may make redemption of said lands from said tax sale by paying the total amount of delinquent taxes and penalties with interest thereon at eight per centum (8%) per annum from date of payment, which plaintiff shall have paid, together with costs of the action, and upon such payment a certificate of redemption therefrom shall be issued by the county treasurer of said county to the defendant so paying, and thereupon the said action shall be dismissed; * * *." (Section 2215.5, R. C. M. 1935.)

"* * * The court shall allow the successful party his costs to be fixed by the court including a reasonable attorney's fee in all cases where the county is not the applicant." (Section 2215.6, R. C. M. 1935.)

When a defendant redeems, who is the successful party to the action? Certainly not the plaintiff for his cause of action is dismissed against him, and, therefore, under the express terms of Section 2215.6, supra, he is not entitled to a judgment for costs.

The only liability of the redemptioner for the payment of costs is that fixed by Section 2215.5, supra, where no mention is made of attorney's fees. The rule is that attorney's fees are no part of the costs of an action in the absence of statute or stipulation. *McBride v. School District*, 88 Mont.

110, 290 Pac. 252; *Bovee v. Helland*, 52 Mont. 151, 156 Pac. 416; *Threadgill v. Home Loan Company*, 122 So. 401; 219 Ala. 411; 61 Corpus Juris, 1462, and 15 Corpus Juris 114.

We are, therefore, of the opinion that the position taken by the redemptioner is correct.