

Opinion No. 57.**Taxation—Real Property—Remitting
Penalty and Interest.****HELD:**

1. According to the language of the statute, in order to redeem lands from delinquent taxes it is necessary that he pay all delinquent taxes to and including the first half of 1936.

2. Senate Bill No. 1 does not affect assignments of tax sale certificates made before March 1, 1937.

3. The constitutional authority of the legislature to enact Senate Bill No. 1 does not depend upon the existence of an emergency since emergency does not create power. (*Home Building and Loan Association v. Blaisdell*, 290 U. S. 398.)

March 11, 1937.

Mr. J. E. McKenna
County Attorney
Lewistown, Montana
Dear Mr. McKenna:

You have asked our confirmation of your opinion to County Treasurer

Ferrell, dated March 5, 1937, upon the following questions submitted to you:

"1. Must a taxpayer pay all delinquent taxes to and including the first half of 1936 at one time before December 1st, 1938 or may he pay any particular year and still receive the benefit of this Act?"

The reasoning of opinion No. 99 in Volume 16, Opinions of the Attorney General, p. 98, applies, as the wording of the two acts are similar. We agree with your conclusion that this question must be answered in the affirmative and that there is no redemption of real property as provided for by Senate Bill No. 1, unless all of the taxes are paid.

"2. In the matter of a tax deed can action be started where old assignments were issued before March 1st, 1937?"

The last sentence of Section 1 of this Act provides:

"This Act shall not apply to the purchaser of any certificate of sale made prior to the passage and approval of this Act."

The Act would therefore not affect assignments made before March 1, 1937, the date when the Act was passed and approved.

3. You have raised the further question whether the legislature may constitutionally declare an emergency for a period covering nearly two years, or until December 1, 1938.

We do not believe that the power of the legislature to waive payment of interest and penalty depends upon an emergency. As said by Chief Justice Hughes in *Home Building and Loan Association v. Blaisdell*, 290 U. S. 398:

"Emergency does not create power. Emergency does not increase granted power or remove or diminish the restrictions imposed upon power granted or reserved. * * * While emergency does not create power, emergency may furnish the occasion for the exercise of power. 'Although an emergency may not call into life a power which has never lived, nevertheless emergency may afford a reason for the exertion of a living power already enjoyed.' *Wilson v. New*, 243 U. S. 332, 348."

Our Supreme Court in *State ex rel. Sparling v. Hitsman*, 99 Mont. 521, apparently did not uphold a similar law on the theory that an emergency existed which gave the legislature the power to enact such law. Our court quoted with approval the language of Chief Justice Hughes, *supra*.

It is possible that where the continued operation of a law depends upon the existence of an emergency, the fact of such emergency is open to judicial inquiry. However, we do not believe that the operation of Senate Bill No. 1 depends upon the existence of an emergency. Until a competent court, if ever, shall place some limitation upon the operation of the Act, we must assume that it is valid according to its terms.