

Opinion No. 94.**Taxation—Land, Tax Deed—Lien, Tax
Contract of Sale of Tax Deed Land.****Held: Taxes levied on land held by
the county under tax deed and
sold on contract as provided by
statute do not become a lien on
such land, but such taxes are
extinguished and canceled upon
a cancellation of the contract
as provided by statute.**

November 19, 1945.

Mr. Frank J. Roe
County Attorney
Silver Bow County
Butte, Montana

Dear Mr. Roe:

You have submitted your opinion rendered to the county commissioners of your county concerning liens on tax deed property sold by the county under contract, which contract was subsequently canceled. It is your opinion that taxes assessed under the terms of the contract to the purchaser do not constitute a lien on the land after the contract has been canceled. I agree with your opinion.

The facts considered are as follows: Tax deed was originally taken by the county on July 22, 1939; on October 2, 1940, the land was sold under contract and went upon the tax rolls as directed by statute in March, 1941, in the name of the purchaser. No taxes were paid by the purchaser for the years 1941, 1942, 1943, 1944 or 1945, and the contract was canceled under its terms. The question submitted is whether or not the taxes assessed for the years specified are now a lien upon the land.

I agree with your statement that the county was never divested of title to these lands. When the county took tax deed, title to said lands vested in the county free of all encumbrances and clear of all claims, except as provided in Chapter 63, Laws of 1937. Upon execution of the contract of sale, as provided by Section 1 of Chapter 181, Laws of 1939 (said chapter repealed by Chapter 171, Laws of 1941), and by virtue of that statute, the land became subject to taxation in the name of the purchaser on the first Monday in March following the execution of such contract, to-wit, March, 1941, and from that date, the purchaser became liable for such taxes.

By virtue of the provisions of Section 2 of Article XII of the Montana Constitution, property owned by the county is exempt from taxation. Hence, there could not be a lien against county property for taxes. However, under Section 3 of Chapter 171, Laws of 1941, county land procured through tax deed, which is sold under contract as therein provided, is made subject to taxes from the first Monday in March following the date of the execution of the contract. In view of Section 2 of Article XII of our Constitution, it can only be the interest of the purchaser which is subject to taxation.

In the case of *Christofferson v. Chouteau County*, 105 Mont. 577, 74 Pac. (2d) 427, the court had under consideration the effect of the cancellation of a certificate of sale of state land under the provisions of Chapter 165 of the Political Code, 1935, dealing with sale of state lands. Section 1805.92 of that chapter provided that "the interest of the purchaser in state lands is subject to taxation." The court said:

"... The interest of the state could not constitutionally be taxed. Article 12, Sec. 2, Constitution . . . Thus it clearly appears that at the times these taxes were levied and assessed they were, so far as this record discloses, levied and assessed in accordance with the laws of the state. After their imposition, and long after they became delinquent, the state land commissioner cancelled the certificate of purchase in accordance with the statute. Thereupon, the interest of the purchaser in the land became extinguished, i. e., the

interest on which these taxes were a lien; the interest being extinguished, the lien likewise ceased to exist."

It is therefore my opinion that taxes levied on land held by the county under tax deed and sold on contract as provided by statute do not become a lien on such land, but such taxes are extinguished and canceled upon a cancellation of the contract as provided by statute.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General