

Opinion No. 98.

Taxation—Counties—Tax Deed Title—Lien, Personal Property Tax Extinguished—Property, Personal, Taxes.

Held: 1. A tax deed issued to a county passes title to the land in the county free of all encumbrances and clear of any and all claims, including lien for personal property tax which had become a lien on the real estate of the owner, except as provided in Chapter 63, Laws of 1937.

2. That personal property taxes which became a lien upon realty and were extinguished through tax deed issued to the county may not thereafter be collected.

3. Whether a former owner of tax title property has a preferential right to repurchase such property depends upon the provisions of Chapter 144, Laws of 1945.

November 26, 1945.

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

Dear Mr. Roe:

You have submitted to me your opinion concerning lien of taxes on land acquired by the county through tax deed proceedings. Your opinion advises the county commissioners that no lien, either for personal or real estate taxes, exists on land to which the county has acquired title through tax deed. I agree with this opinion.

The facts upon which your opinion is based are as follows:

"Silver Bow County has acquired tax title to a certain piece of real property and such property is to be offered for sale by the county to be sold to the highest bidder . . .

" . . . Taxes on personal property, located on said realty and owned by the owner of the realty for the year 1941 were duly levied for 1941, were not paid and still remain unpaid."

The questions involved are as follows:

1. Whether the personal property taxes are still a lien on the realty, and

2. Whether the personal property taxes for 1941 can now be collected.

Section 2153, Revised Codes of Montana, 1935, as amended by Chapter 97, Laws of 1937, provides:

"Every tax due upon personal property is a prior lien upon any or all of such property, which lien shall attach, have precedence over any other lien, claim or demand upon such property, and except as hereinafter provided, every tax upon personal property is also a lien upon the real property of the owner thereof, from and after 12 M. of the first Monday in March of each year."

Section 2215.9, Revised Codes of Montana, 1935, as amended by Chapter 63, Laws of 1937, provides:

"The deed hereafter issued under this or any other law of this state shall convey to the grantee the absolute title to the lands described therein as of the date of the expiration of the period for redemption, free from all encumbrances and clear of any and all claims of said defendants to said action except the lien for taxes which may have attached subsequent to the sale and the lien of any special, local improvement, irrigation and drainage assessments levied against the property payable after the execution of said deed, and except when the land is owned by the United States or this state, in which case it is prima facie evidence of the right of possession accrued as of the date of expiration of such period of redemption."

Our Supreme Court in the case of *State ex rel City of Great Falls v. Jeffries*, 83 Mont. 111, 116, 270 Pac. 638, 640, adopted the principle that a tax sale creates a new title, cutting off all prior liens, encumbrances and interests, and held as follows:

"The tax deed mentioned is not derivative, but creates a new title in the nature of an independent grant from the sovereignty, extinguishing all former titles and liens not expressly exempted from its operation . . ."

Therefore, upon issuance of the tax deed to the county, all liens for taxes then existing against the land were extinguished, except those which were specifically exempted under Chapter 63, *supra*. Personal property taxes were not exempted. By the issuance of the tax deed to the county in this instance, the land was freed of all liens for taxes, both real and personal.

In the facts given, it is not stated when tax deed was issued to the county. However, this is immaterial because after tax deed issued to the county, there could be no taxes, either personal or real, levied against the property, and hence no lien could attach. The purchaser from the county, therefore, obtains a clear title "free of all incumbrances and clear of all claims" except as provided in Chapter 63, *supra*.

As to your second question, I agree with your conclusion that the delinquent personal taxes for the year 1941 which were a lien upon the real estate cannot now be collected.

Our statutes provide a method for the collection of taxes by sale of the property. The Supreme Court of this state has, on several occasions, held the legislature having provided a method for the collection of taxes, such method is exclusive where adequate. In the case of *State v. Nicholson*, 74 Mont. 346, 352, 240 Pac. 840, the court said:

"An examination of our statutes discloses that the steps to be taken by the county treasurer in the collection of state and county taxes made a lien upon real property, are clearly and explicitly indicated. They are pointed out in Chapter 173, Part 111, Revised Codes of 1921, as amended by Chapter 96 of the Session Laws of 1923. The requirements of these statutes are mandatory. The treasurer must advertise and sell the real property as therein commanded. He is not given the option to abandon a sale of the real property and pursue the personal property of the delinquent. The statutory procedure for collecting such taxes being adequate, it is exclusive." (See also *State ex rel Tillman v. District Court*, 101 Mont. 176, 181, 53 Pac. (2d) 107; *Calkins v. Smith*, 106 Mont. 453, 78 Pac. (2d) 74.)

In your statement of facts you state "the right of the original taxpayer to purchase such property for the amount of taxes, penalty, and interest for which the property was acquired by the county is understood and conceded." As you do not state when the property was acquired by the county through tax deed, the question presents itself as to the right of the former owner to exercise a preferential right. His right would depend upon the provisions of Chapter 144, Laws of 1945, which chapter amends Chapter 171, Laws of 1941. Under the provisions of this chapter, the former owner's right to preference depends upon when the county obtained tax deed. This office covered this subject fully in Opinion No. 40, Volume 21, Report and Official Opinions of the Attorney General, and I refer you to this opinion on this point.

It is therefore my opinion that:

1. A tax deed issued to a county passes title to the land in the county free of all encumbrances and clear of any and all claims, including lien for personal property tax which had become a lien on the real estate of the owner, except as provided in Chapter 63, Laws of 1937.

2. That personal property taxes which became a lien upon realty and were extinguished through tax deed issued to the county, may not thereafter be collected.

3. Whether a former owner of tax title property has a preferential right to repurchase such property depends upon the provisions of Chapter 144, Laws of 1945.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General