

VOLUME NO. 41

OPINION NO. 77

CITIES AND TOWNS - Special assessments to be paid by city taking assignment of county's rights in tax property;

COUNTIES - Duty to take tax deed to subdivision property struck off following a tax sale;

LIENS - Effect of tax deed on special assessment liens;
PROPERTY, REAL - Assignment of rights to property sold
to county following tax sale;
SPECIAL IMPROVEMENT DISTRICTS - Collection of accel-
erated assessments following tax sale;
TAXATION AND REVENUE - Collection of accelerated special
assessments following tax sale;
MONTANA CODE ANNOTATED - Sections 7-12-4183, 7-12-4191,
15-17-101(1)(b), 15-17-201, 15-17-207, 15-17-303,
15-18-101, 15-18-203, 15-18-309, 85-7-2152;
OPINIONS OF THE ATTORNEY GENERAL - 40 Op. Att'y Gen. No.
15 (1983).

- HELD: 1. A city must pay all delinquent taxes,
including special assessments, to a county to
effect an assignment of the rights of the
county in property struck off following a tax
sale.
2. A county is not required to take a tax deed to
subdivision property struck off following a
tax sale.
3. Following issuance of a tax deed to a county,
the county is not responsible for payment of
accelerated delinquent special assessments due
prior to issuance of the deed.

1 August 1986

Mike Salvagni
Gallatin County Attorney
Law and Justice Center
615 South 16th Street
Bozeman MT 59715

Dear Mr. Salvagni:

You have requested my opinion on the following questions
concerning the rights of Gallatin County and the City of
Belgrade to certain municipal property struck off to the
county following a tax sale:

1. If a city proposes to take an assignment
of rights from a county in real property
pursuant to section 15-17-303, MCA, and
that property is subject to accelerated
delinquent special assessments as well as
real property taxes, may the county

assign its right to the city with the city paying the delinquent taxes, penalties, costs, and interest, but without the city paying the accelerated delinquent special assessments?

2. If the rights of the county to property struck off to the county pursuant to section 15-17-207, MCA, are not assigned, is the county required to take a tax deed to the property under section 15-18-203, MCA?
3. If the county takes a tax deed to property and is unable to sell the property pursuant to section 7-8-2301, MCA, is the county responsible for paying the accelerated delinquent special assessments to the city?
4. If the city has insufficient funds to pay the accelerated assessments, may it nevertheless take assignment of the county's rights in the property, auction the property off, and then place the proceeds into the appropriate special improvement district funds?
5. If the answer to question No. 4 is in the affirmative, is the city bound to the same marketing procedures as the county under sections 7-8-2213(2), 7-8-2214, and 7-8-2218, MCA?

These questions arise from a factual situation that has become increasingly common in Montana counties with urban populations: Subdividers who are unable to market lots following the creation of special improvement districts and levy of assessments have defaulted on the payment of the special assessments and general taxes.

In your situation special improvement districts were created for water, sewer, and street improvement within the Bullthistle subdivision in the City of Belgrade. The developer of the subdivision retained several lots and defaulted on the payment of the special improvement assessments as well as the property taxes. The Belgrade City Council accelerated the assessments and, pursuant to section 7-12-4183, MCA, certified the delinquent

assessments to the Gallatin County Clerk and Recorder for collection. This statute grants a city council the option to make all future installments delinquent and immediately payable when any one installment becomes delinquent. Following acceleration, the total amount of delinquent taxes was approximately \$194,000, of which only \$5,000 was attributable to general property taxes.

The property was offered for sale pursuant to section 15-17-201, MCA. Because there was no purchaser at the tax sale, the property was deemed purchased by, or "struck off" to, the county in accordance with section 15-17-207, MCA. Gallatin County received a tax sale certificate and has continued to hold the certificate since no offer of redemption was made during the statutory 36-month period of redemption.

Gallatin County is empowered to assign its interests in the subdivision by section 15-17-303, MCA. That statute in relevant part provides:

Assignment of rights of county. (1) At any time after any parcel of land has been bid upon by the county as the purchaser thereof for taxes as provided in 15-17-207, the same not having been redeemed, the county treasurer shall assign all the right of the county therein acquired at such sale to any person who pays the amount for which the same was bid, with interest upon the original tax at the rate of 5/6 of 1% per month and the amount of all subsequent delinquent taxes, penalties, costs, and interest as provided by law upon the same from time to time when such tax became delinquent.

Gallatin County has not taken a tax deed to the property as allowed by section 15-18-203, MCA, and Belgrade is interested in acquiring title to the lots. Belgrade has joined in your opinion request which is largely concerned with whether the City must pay the accelerated delinquent special improvement assessments to the county treasurer to effectuate a valid assignment of rights.

1. Assignment of the Rights of the County.

The purpose of the statutory assignment provision is to allow a county to free itself of property encumbered by liens without waiting for the conclusion of the period

of redemption. A third-party assignee thereby acquires a property interest subject to the owners' right of redemption and assumes the risk that this interest may not ripen into a clear title because of later redemption. Case law in this state has held that, when property is struck off to a county and the county assigns its interest, the assignee does not have title, but an inchoate right which can ripen into a title "free from all encumbrances." Higgins v. Montana Hotel Corporation, 181 Mont. 149, 153, 592 P.2d 930, 933 (1979).

Unless a tax sale results in payment of all outstanding taxes, the property remains encumbered. Section 7-12-4191, MCA, provides that any special assessment levied upon a piece of property creates a lien upon that property and that the lien can only be extinguished by payment of such assessment with all penalties, costs, and interest.

Were it not for the assignment statute, § 15-17-303, MCA, a county would be without any authority to assign its interest in tax sale property. When an assignment is made, the statutory terms and conditions must be fully satisfied. The statute specifically states that the assignee must pay the amount for which the property was bid at the tax sale. No provision is included for an assignment following partial payment of the delinquent general taxes, excluding the special assessment taxes. Unpaid special assessments are to be treated in the same manner as general taxes and the property sold in a similar manner. § 7-12-4183, MCA. The notice of tax sale includes recognition of delinquent municipal assessments. § 15-17-101(1)(b), MCA. Thus, the amount for which tax property is bid at a tax sale includes any outstanding special assessments. There is no exemption from full payment created for an assignment to a municipality. All purchasers of the assignment stand on equal footing: Upon payment of the total amount of delinquencies the assignment is complete whether the assignee is a private party or a governmental body.

My conclusion that an assignee under section 15-17-303, MCA, must pay all taxes including assessments is analogous to a prior opinion in which I held that the period of redemption cannot be extended by payment of part of the delinquent taxes. In 40 Op. Att'y Gen. No. 15 (1983) I invalidated Missoula County's practice of

allowing the owner of property struck off to the county to pay one year's delinquent taxes and forestall issuance of a tax deed for an additional year. Our statutes provide only a three-year period of redemption during which a redemptioner can avoid issuance of a tax deed by payment of delinquent taxes. § 15-18-101, MCA. I was therefore unable to read into the statutes a process for "partial redemption." Similarly, I refuse to recognize a right of "partial assignment" that extends to a municipality. My conclusion is also equitable when viewed from the perspective of the prior owner of the property during the period of the redemption. That owner, in order to redeem, must pay the full amount of delinquency to the county or its assignee. A municipal assignee that had received its interest at a discount--payment of only general taxes--would receive a windfall from a redemptioner making full tender of all delinquencies.

For the foregoing reasons I conclude that Belgrade must pay all delinquent taxes including the accelerated special assessments in order to take an assignment of the rights of Gallatin County.

2. Duty of the County to Take a Tax Deed.

You have asked whether Gallatin County has a duty to take a tax deed. The relevant statute is section 15-18-203, MCA:

Application for tax deed by local governing body. Whenever a county, city, or town becomes the purchaser of property sold for delinquent taxes and is the holder of the certificate of sale when the time for redemption expires, the board of county commissioners, city or town council or commission at any time thereafter deemed proper may order and direct the county clerk and recorder, city or town clerk to apply to the county or city treasurer or town clerk, as the case may be, for the issuance to the county, city, or town of a tax deed for such property.

The statute employs discretionary language stating that the board may order and direct the county clerk to apply for a deed. Some Montana cases have found this authority to be mandatory although the circumstances are

distinguishable. In one case, Malott v. Board of Commissioners of Fergus County, 86 Mont. 595, 285 P. 932 (1930), the Court found the language of section 2209, R.C.M. 1921 (precursor to section 15-18-203, MCA), permissive but concluded that it must be construed as mandatory where the interests of an irrigation district were concerned. The holding was explained three years later in Malott v. Cascade County, 94 Mont. 394, 22 P.2d 811 (1933). There the Court stated that a trust relationship exists between a county commission and an irrigation district that has received a debenture certificate in accordance with section 7243, R.C.M. 1921 (precursor to section 85-7-2152, MCA). In deciding that the county becomes a trustee, the Court noted: "This is but one of the puzzles which may be expected to appear from time to time in the operation of Montana's maladroit irrigation law." 94 Mont. at 406, 22 P.2d at 816. Given this comment on the original Malott holding and the clear language of the tax deed statute, "may order and direct," I find that the prior Supreme Court's decisions should be considered limited to their facts, i.e., where an irrigation district's property and bondholders are involved. Thus, a county is under no obligation to take a tax deed to subdivision property it holds under a tax sale certificate. Accord 85 C.J.S. Taxation § 920 (1954).

3. Responsibility for Payment of Accelerated Delinquent Special Assessments.

A further question advanced by Gallatin County is whether the County would be responsible for payment to the City of Belgrade of the accelerated assessments after it takes a tax deed. Section 15-18-309, MCA, establishes the effect of a tax deed. This statute states in relevant part:

Effect of deed. The deed 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 of 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

This statute clearly leaves unaffected special assessments payable after execution of the tax deed, but extinguishes those payable before the taking of the deed. The Legislature possesses power to declare when liens for municipal taxes shall exist and also has the authority to declare when liens for municipal taxes shall cease. McQuillin, Municipal Corporations § 44.147 (3d ed.).

In the circumstances described in your opinion request, the Belgrade City Council accelerated the future assessment payments under the authority of section 7-12-4183(2), MCA. Because of this acceleration all assessment payments became due and were payable immediately. Thus, since none of the payments is due subsequent to issuance of a tax deed for the property, the assessment lien would be extinguished in its entirety. Under the plain operation of section 15-18-309, MCA, the County would not be responsible for the past-due accelerated payments once a tax deed is acquired.

The questions raised by the City of Belgrade enumerated four and five are rendered moot by the prior holdings of this opinion. As I have stated, Belgrade may not take an assignment of the rights of Gallatin County without tendering the full amount of delinquent taxes, including the accelerated assessments. Where a city has accelerated future assessments and these sums are substantial, the present statutory procedure under which tax sale lands are struck off to the county is admittedly inequitable from the standpoint of the municipality. Nevertheless, I am constrained to interpret the tax property statutes as enacted.

THEREFORE, IT IS MY OPINION:

1. A city must pay all delinquent taxes, including special assessments, to a county to effect an assignment of the rights of the county in property struck off following a tax sale.
2. A county is not required to take a tax deed to subdivision property struck off following a tax sale.

3. Following issuance of a tax deed to a county, the county is not responsible for payment of accelerated delinquent special assessments due prior to issuance of the deed.

Very truly yours,

MIKE GREELY
Attorney General