Chattel Mortgage, Assessment Of-County Attorney, Duty Of.

- I. Where G gave J a chattel mortgage as security for a negotiable promissory note, which note was executed in payment of rent in advance, such mortgage is assessable. If the owner of such mortgage had any grievance on account of the assessment of such a mortgage, he should have presented the same to the Board of County Commissioners, sitting as a Board of Equailzation, and not having done so, the Board of County Commissioners are without authority to make any change in the assessment.
- 2. The County Attorney must furnish an opinion in writing to the Board of County Commissioners without fee, when required. This is an official duty which he can be compelled to perform.

Helena, Montana, Nov. 20, 1905.

Board of County Commissioners, Great Falls, Montana.

Gentlemen:—Your letter of November 10, requesting an opinion of this office upon the following questions, received:

- "1. Whether or not the chattel mortgage No. 7080 is legally assessable for the year 1905;"
- "2. Whether or not the Board of County Commissioners can grant the relief asked for by said John C. Johnson;"
- "3. Whether or not the Board of County Commissioners have the authority to require of the County Attorney an opinion, in writing, upon the questions submitted above;"
- "4. And should you hold that the said Board has such authority, what recourse has the said Board in case the County Attorney refuses to furnish such opinion. On November 9th, 1905, one John C. Johnson, by his agent, appeared before the Board of County Commissioners and asked to have the assessment of said mortgage (chattel No. 7080, a certified copy of which is herewith enclosed) cancelled for the reason that said mortgage was given to secure the payment of rent for real estate, said rent not becoming due until December 25, 1905."

These questions will be answered in the order in which they are asked:

1. It appears from the certified copy of the chattel mortgage, which accompanies your letter, given by Charles Gerloch to John C. Johnson, that on February 1, 1905, the said Charles Gerloch executed and delivered to the said Johnson his promissory note, in words and figures follows:

"\$700.00 Great Falls, Montana, February 1, 1905.

On December 25, 1905, after date, I promise to pay to the order of John C. Johnson Seven Hundred and No-100 Dollars for value received negotiable and payable at The Cascade Bank, in Great Falls, Montana, with interest at the rate of......per cent per annum after maturity, until paid, and reasonable attorney's fees. The makers and endorsers hereby waive presentment, demand, protest and notice thereof. This note is given in evidence of rent to become due Dec. 25, 1905, the payment of which shall satisfy both this note and said Amt. of rent.

Discount	
No	Charles Gerloch."
Due	
Postoffice	

And as security for the payment of such note executed a chattel mortgage on the property described therein. This note was, in effect, the payment in advance of the rent. It is a negotiable, promissory note, and from the date that the same was executed and delivered the maker of the note owed the seven hundred dollars. In law there is no difference between this note and one given for money borrowed, in which the borrower promises to pay the same upon a day certain in the future.

Section 3701, Political Code, division 6, provides that a person must be assessed with "all solvent credits, secured or unsecured, due or owing to such person * * * deducting from the sum total of such credits, only such debts secured or unsecured, as may be owing by such person." There can be no question but what upon the execution of this note and mortgage by the said Gerloch it was a solvent credit belonging to the said Johnson. Johnson could have negotiated the same to an innocent purchaser before maturity, and the said Gerloch was liable for the seven hundred dollars whether he continued to occupy the house or not, as he had by giving such note paid the total rent in advance.

We are of the opinion, therefore, that this note and mortgage was subject to assessment on the first Monday in March, 1905, against the owner of the note at that time.

- 2. This mortgage, being legally assessable on the first Monday in March, 1905, as a solvent credit, the person assessed, if he had any grievance, should have appeared before the board of county commissioners when sitting as a board of equalization ,and not having so appeared the board would have no authority at this time to make any change in such assessment.
- 3 and 4. Subdivision 6, of section 4450, Political Code, as amended by laws 1899, p. 76, provides that the county attorney must "give when required, and without fee, his opinion in writing, to the county, district and township officers, on matters relating to the duties of their respective offices." This provision is mandatory and clearly makes it the duty of

the county attorney to give written opinions to the board of county commissioners upon matters relating to the duties of their office when so requested by them. Where the county attorney fails to perform his duty there are several remedies against him: (1) It may be by the use of the writ of mandamus, under section 1961, Code of Civil Procedure; (2) Where the county attorney wilfully refuses or neglects to perform official duties pertaining to his office without any just or reasonable excuse, accusation in writing may be made against him under section 1545, Penal Code. Whereupon, he would be cited before the district judge, and if, upon a hearing, the charge is sustained the court must enter a judgment that the party accused be deprived of his office. This last method, however, is a very drastic one and should not be resorted to unless it is apparent that there is a wilful and persistent neglect on the part of an officer to perform his official duties.

Under the facts submitted in this case, it does not appear upon what ground the county attorney refused to give the written opinion. However, the certified copy of the chattel mortgage shows that the county attorney was the person who drew the same, and it might be that he felt that he was disqualified to give an opinion on this matter. The statute making it the duty of the county attorney to give written opinions to the board of county ocmmissioners, when requested by them upon matters relaing to the duties of heir office, is so plain that we cannot conceive of any case in which the county attorney would refuse to give such an opinion unless he is disqualified or has some other good and valid excuse which would be satisfactory to the board if explained to them.

Respectfully submitted,

ALBERT J. GALEN, Attorney General.