

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

1. 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 Equalization, 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:

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 commissioners, when requested by them upon matters relating to the duties of their 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.