

Taxation, Personal Property Tax. Real Estate, Interest In, Taxation Of. Statute of Limitations. Board of County Commissioners, Powers Of. Poor Farm, Sale Of.

1. Proceedings to collect personal property tax are barred after two years. Lien for taxes does not attach to after acquired property.

2. Whatever interest a person has in land, whether of title or right of possession, may be taxed.

3. The Board of County Commissioners has the power to sell the County Poor Farm and to invest the proceeds in the erection of a hospital for the care of the poor.

Helena, Mont., February 2, 1907.

Hon. Sharpless Walker,
County Attorney,
Miles City, Mont.

Dear Sir:—

I am in receipt of your letter of January 16th, in which you request

official opinion of this office upon certain propositions of law stated therein, to-wit:

"1. A, in 1903, was running a band of sheep for parties in St. Paul and listed the stock for taxation in his own name, the levy being, approximately, \$100.00. During that year the owner sold the sheep and the taxes were never paid. A, in February, 1906, bought land which was free from incumbrance, giving as the purchase price a mortgage for \$1000.00. In August, 1906, A's sons paid \$200.00 on the mortgage. In October, A conveys his interest to his wife, which conveyance was, of course, subject to the mortgage. In December, 1906, the county treasurer advertised the land for sale for the taxes assessed on personal property to A in 1903 as above mentioned. Can the county treasurer at this time make a legal sale of said land for said taxes?"

"2. A buys land from the Northern Pacific Railroad Company under the usual contract of sale. In 1906 he refused to list any personal property in the county and the assessor listed sheep belonging to A on which the assessment is about \$200.00. The railroad land has been advertised for sale by the county treasurer for the said tax. Can said land be sold for taxes on property of the vendee other than the land itself or the improvements thereon?"

"3. The county commissioners desire to sell the county poor farm for which there seems to be no use, and purchase land and build and equip a county hospital, for which there seems to be urgent necessity. Is it within the scope of the duties and powers of the board to make these transactions in behalf of the county, they not incurring an indebtedness in excess of ten thousand dollars?"

These questions will be considered in the order presented.

1. Proceedings for the collection of the tax mentioned in your first enquiry are now barred by the statute of limitations. Furthermore, the lien for personal property tax does not attach to after acquired real estate.

Letter to Hon. T. J. Porter, March 4, 1905, Opinions of Att'y. Gen'l., 1905-06, p. 46.

People v. Kohl, 40 Cal. 127.

2. By the provisions of Art. 12 of the State Constitution, all property not exempt must be assessed for the purposes of taxation. Sub-Div. 1, Sec. 3680, Pol. Code, defines real estate as including,

1. The possession of, claim to, ownership of, or right to, the possession of lands."

And by the provisions of sub-div. 1, section 3701, Pol. Code, the assessor must require a statement from each person which shall separately show:

1. All property belonging to, claimed by, or in the possession or under the control or management of such person."

ERRATA:

Syllabi of Opinions on this Page Transposed.

Under these statutory provisions it seems almost any claim to, or interest in land or to the right of possession thereof, may be assessed and taxed as real estate, and by the provisions of section 3828, Pol. Code, "Every tax due upon personal property is a lien upon the real property of the owner thereof from and after twelve o'clock M. on the first Monday in March of each year." Hence, whatever interest A had in this land at twelve o'clock M. on the first Monday in March, 1906, may be taxed, and such interest is subject to the lien for personal property tax as provided in said section 3828, and it may be sold in satisfaction of such personal property tax.

In *Baltimore Shipbuilding and Dry Dock Company v. Baltimore*, 195 U. S. 375; it is held that the state may tax different estates in land to the different parties thereto and sell only the interest of the party making default, and in *Central Pacific R. R. Co. v. Nevada*, 162 U. S. 512; it is held that the possessory claim to land is a proper subject for assessment and taxation.

3. By the provisions of sub-div. 5, Sec. 4230, Pol. Code, the Board of County Commissioners has power:

"To provide for the care and maintenance of the indigent sick, or the otherwise dependent poor of the county."

And sub-div. 6:

"To provide a farm for the support of the poor, etc."

Under these provisions of the statute it is within the power and is also the duty of the County Commissioners to provide for the care and maintenance of the indigent sick and poor of the county, but the method of so doing is left largely to the discretion of the Board. Under the provisions of sub-div. 10, Sec. 4230, Pol. Code, the county commissioners are given authority to sell any real or personal property which belongs to the county.

It is my opinion, therefore, that the board has the authority to sell the county poor farm and to provide for the care and maintenance of the indigent sick and dependent poor of the county in such other manner as may seem to the best interests of the county, and may, therefore, erect and maintain a hospital for that purpose. The board, however, cannot use the proceeds received from the sale of the poor farm for any other purpose than in providing for the care of the poor and indigent sick; that is, they cannot legally divert the money from the poor fund.

This matter is discussed to some extent in opinion of this office to Hon. R. N. Hawkins, Chairman, dated April 26, 1905, *Opinions of Atty. Gen'l.*, 1905-06, p. 233. The board, however, does not have authority to erect and maintain a "detention" hospital.

Yegen v. Board of Commissioners, 85 Pac. 740.

Very truly yours,

ALBERT J. GALEN,

Attorney General.