

Taxes, Collection of Delinquent. Delinquent Taxes, Collection of by Suit.

Where a party or firm engaged in the sheep business, who was assessed for cattle, horses and sheep; also for improvements situated on public lands, has left the county and permitted the tax levied thereon to become delinquent, an action on debt should be brought for the recovery of such tax in the county in which such property was situated.

Helena, Mont., November 26, 1909.

George A. Horkan, Esq.,
County Attorney,
Forsyth, Montana.

Dear Sir:

I am in receipt of your favor of the 24th instant, asking the advice of this office with reference to the collection of certain delinquent taxes.

It appears from your statement of facts that during the month of March, 1908, the assessor of Rosebud county assessed a firm engaged in the sheep business, by the name of Brockway Brothers, for sheep, horses and cattle, then located in Rosebud county, and also for improvements situated on public unsurveyed land, consisting of a house, barns and fences. Shortly after such assessment Brockway Brothers moved to Custer county, and also moved with them all of their personal property and disposed of their improvements on public land.

Under these circumstances you desire advice as to the best method of procedure to collect the delinquent taxes on such property.

After full consideration of what you say, and reference had to the statute, I am of the opinion that you should bring an action for the recovery of the money due for taxes under the statute rather than to attempt to foreclose any lien on the improvements situated in your county. I would advise that an action be brought in Rosebud county, and thereafter, perchance, on change of venue, it might be taken to Custer county, but the county's rights would thereby in no wise be affected.

I am somewhat at a loss to know of the meaning and application of section 2738, revised codes of 1907. However, if the procedure by you is adopted such as I have herein above indicated, we may eventually be able to get a ruling of the supreme court which will more clearly define the procedure for the future.

Very truly yours,

ALBERT J. GALEN,

Attorney General.