

Mortgage Instrument, Not Property.

A mortgage instrument has no value when separated from the debt it secures, and a law providing that such instruments shall not be subject to assessment and taxation is not unconstitutional.

Helena, Montana, January 13, 1909.

Hon. George McCone, Chairman, Committee on Finance and Claims, Helena, Montana.

Dear Sir:

I beg to acknowledge receipt of your verbal request for the opinion of this Department as to the constitutionality of Senate Bill No. 14, providing

That mortgages of real and personal property shall not be subject to assessment and taxation.

Perhaps the only objection that can be made to the constitutionality of the provisions of this bill is that it violates Article XII., of the state constitution, by exempting property from taxation. The provisions of this bill, however, deal solely with mortgages and not with the indebtedness secured thereby, and a mortgage, under the statutes of Montana, does not create an estate in property. It is a mere lien fixed on property by contract of the parties to secure the payment of a particular obligation or the performance of a particular act.

Section 5317, et seq., Revised Codes;

Davidson v. Wampler, 29 Mont., 61;

Swain v. McMillan, 30 Mont. 433;

Mueller v. Renkes, 31 Mont., 100;

Holland v. Commissioners, 15 Mont., 460.

The mortgage is an incident of the debt or obligation; a security, and independent of the debt; has no assignable quality, and an assignment of the mortgage alone is a nullity.

Cornish v. Woolverton, et al. 32 Mont., 456;

Renton v. Gibson, 148 Cal. 653.

The mortgage instrument, therefore, of itself has no value when divorced from the debt or obligation it secures, and such debt should be assessed and taxed as a "solvent credit."

Sec. 2511, Revised Codes;

Sec. 17, Art. XII., State Constitution.

This bill does not exempt the debt from assessment and taxation, but only the mortgage instrument which secures the debt and which has no value when separated from the debt, and the debt has already been assessed for taxation under the head of "solvent credit."

You are therefore advised that the terms of the bill do not contravene the provisions of the state constitution.

Very truly yours,

ALBERT J. GALEN,

Attorney General.