

Deeds, Given to Secure Indebtedness, Mortgages. Mortgages, Taxation Of. Taxation, of Mortgages. Taxation, Bonds for Deed.

A deed given to secure an obligation for payment of money, is in reality a mortgage and should be assessed as such. It is a contract by which a debt is secured within meaning of Section 2578, Revised Codes.

April 1, 1911.

Mr. Justin M. Smith,
County Attorney,
Bozeman, Montana.

Dear Sir:

I am in receipt of your letter of the 29th inst., wherein you submit for an opinion from this office the question as to the assessment of bonds for deed and in which communication you state:

"It is customary where a loan is negotiated and real estate security demanded, for the borrower to deed sufficient real estate to the lender and the lender to give back a bond for deed, conditioned for the reconveyance of the real estate upon the payment of the note representing the loan. This is a common practice in this county and I believe in other counties in our state, and is resorted to by lenders of money for the purpose of avoiding payment of taxes on real estate mortgages." and in which letter you further state,

"I have advised the county assessor that bonds for deed should be taxed as real estate mortgages."

In substance your opinion rendered to the county assessor is correct, however, it is not upon the bond for deed alone that the assessment can be levied, but it is upon the contract as entered into between the parties, which of necessity would include both the deed given by the borrower and the bond for deed given in return by the lender; and in case where the facts are as stated in your letter as quoted above, there is no question but what the contract would be assessable, and included in the abstract made by the county clerk in accordance with the provisions of Section 2578, Revised Codes of 1907, which is as follows:

"To assist the assessor in the performance of his duties, the county clerk must annually transmit to the assessor on or before the first Monday in March, a complete abstract of all mortgages, deeds of trust, contracts and other obligations by which any debt is secured, etc. * * * *"

However, in the assessment of this class of property I would respectfully call your attention to the opinion rendered by this office November 22, 1909 to Honorable W. H. Trippet, then county attorney at Anaconda, wherein we hold:

"A mortgage upon real estate is assessed as personal property and the domicile of the owner of the mortgage is the situs for the taxation thereof."

The state of facts contained in your letter and quoted herein above are such as are contemplated by the decision of the supreme court of this state in the case of Groggin vs. Valley Trading Company, reported in 30 Mont. 229, wherein the supreme court held that such a transaction was in reality a mortgage and would be considered and treated as such.

Yours very truly,
ALBERT J. GALEN,
Attorney General.