

**Taxes, Compromise Of. County Commissioners, Authority Of to Compromise Disputed Claim. Limitation, Statute Of. Tax Deed, Void on its Face.**

The statute of limitations has no application to a tax deed void on its face.

The board of county commissioners has the authority to compromise a disputed claim for taxes.

A tax deed void on its face will not prohibit the county board from compromising a disputed claim for taxes for the non-payment of which the deed was issued to the county.

Sept. 6, 1911.

Hon. W. L. Ford,  
County Attorney,  
White Sulphur Springs, Mont.

Dear Sir:

I am in receipt of your letter of August 29th, submitting certain questions relating to the application of the statute of limitations to tax deeds, and to the power of the board of county commissioners to compromise disputes existing as to the validity of taxes and tax certificates. I am not informed as to the allegations of the tax deed referred to except in a general way, but I will discuss the matter on the supposition that the tax deed in question is similar in its allegations to the one presented to the supreme court in *Rush v. Lewis and Clark county*, 36 Montana, 566, and again on rehearing in 37 Mont., 240, in which decisions the court held the tax deed "void on its face."

The questions then submitted are substantially:

1. Do the provisions of Chapter 50, Session Laws of 1909, prescribing two years limitation for the beginning of an action to set aside a tax deed, apply to a tax deed that is "void upon its face?"
2. Has the board of county commissioners authority under the law to compromise a disputed claim for taxes?
3. Where the county holds a tax deed void upon its face, the provisions of Chapter 123, Session Laws of 1909 prohibit the

board from compromising a disputed claim for taxes for the non-payment of which the deed was issued to the county?"

In the letter addressed to you on September 1st, mere conclusions were stated, as time would not permit of any discussion of the questions involved. The questions will now be considered in the order stated.

## 1.

It may be stated, as a general proposition that an instrument void upon its face cannot properly be received in evidence nor can such an instrument be made competent evidence by outside testimony.

Dolan et al. vs. Passmore et al. 34 Mont. 277;

Page et al. vs. Gillette (Colo.) 107 Pac. 290.

While the supreme court in the Rush case above cited held the tax deed void, it did not in that decision define the word "void."

In Toledo R. Co. v. Continental Trust Co., 95 Fed., it was held that the term "void," or the phrase "null and void," did not necessarily mean worthless but may in some cases mean voidable.

The supreme court of Montana, however, in their decisions, define these terms. In Forrester and McGinniss v. B. & M. Co., 29 Mont. 397, the court adopted the definition of this term as given in the Standard dictionary and in Webster's dictionary, that is, that a void instrument is:

"of no legal or binding force or validity; of no efficacy; invalid; void; nugatory; useless; of no account or significance." In State v. Evans, 15 Mont. 539, it is said:

"Void things are as no things."

"Strictly speaking; 'void' means without legal force or effect; ineffectual to bind parties, or to convey or support a right."

29 Am. & Eng. Enc., of Law, 1065.

It is a maxim of jurisprudence that:

"Time does not confirm a void act."

Section 6207, Revised Codes.

In Salmer et al. v. Lathrop et al., 72 N. W. 570, the supreme court of South Dakota had under consideration the validity of a tax deed, and after holding the deed void upon its face, said with reference to the statute of limitations:

"The deed though recorded more than three years previous to commencement of the action, being void upon its face, does not set in operation the statute of limitations, or render the defendants' actual possession thereunder sufficient to create an interest adverse to that of the plaintiff \* \* \* Says Mr. Black: "The provision of a statute of limitations, to the effect that an action for the recovery of real property sold for taxes can only be commenced within a certain number of years from the date of the recording of the deed, will not run in favor of a tax deed that is void upon its face, even when the land intended to be conveyed by the tax deed, has been in actual, open and notorious possession of the holder

of the void deed during the whole of the statutory period.' To the same effect, see, also, *Heger v. De Groat* (N. D.) 56 N. W. 150; *Hall's Heirs v. Dodge*, supra; *Daniels v. Case*, 45 Fed. 843; *Nichols v. McGlathery*, 45 Iowa, 189; *Towle v. Holt*, 14 Neb. 221, 15 N. W. 203; *Hurd v. Bresner*, 22 Pac. 371; *Pearce v. Tittsworth*, 87 Mc. 635; *Sheehy v. Hinds*, 27 Minn. 256, 6 N. W. 781; *Coulter v. Stafford*, 6 C. C. A. 18, 56 Fed. 564; *Redfield v. Parks*, 132 U. S. 239, 10 Sup. Ct. 83."

*Salmer v. Lathrop*, 72 N. W. 570.

To the same effect are the decisions in, *Page v. Gillette*, 107 Pac. (Colo), 290.

*Gibson v. Knefeer*, 77 Pac. (Kan.) 282.

*Smith v. Williams*, 73 S. W. (Mo.) 315.

*Lewis v. Blackburn*, 69 Pac. (Ore.) 1024.

*Horsewell v. Farnham*, 92 N. W. (S. Dak.) 1082.

From these cases it is apparent that the tax deed in question being void upon its face, is not competent evidence and not sufficient to set in operation the statute of limitations. This discussion you will notice applies only to deeds that are void upon their faces, and not to deeds that are merely voidable for as to such latter deeds the statute of limitations would probably apply.

## II.

Under and by virtue of the authority vested in the board of county commissioners by the provisions of Section 2894, Revised Codes, particularly Sub-divisions 15, 22 and 25, also by the provisions of Section 2669 of the Revised Codes, the board of county commissioners has the authority to compromise a bona fide dispute existing as to the validity of taxes and tax certificates. This matter is so thoroughly discussed in *Multnomah County v. Title Guar. & Trust Co.* 80 Pac. (Ore) 409, that we here refer to that decision for discussion of the principals involved, and for the consideration of the statutes, for the Oregon statute is substantially the same as the given statute on this subject.

## III.

Chapter 123, Session Laws of 1909, provides in substance that where a county has become the purchaser of real estate sold for taxes, and the same has not been redeemed and the time for redemption has expired, the board may at any time, by an order, sell the same at public auction, but no such sale shall be made unless the price offered is sufficient to discharge all accrued taxes to date of sale together with interests and costs. This statute has reference to property held by the county under a valid tax deed, and where the tax deed is void, it is the same as if no deed had been taken and the period of redemption does not expire until the deed is issued, or at least until the thirty days posting has expired, and in this particular case while the deed held by the county is wholly void and cannot be used as evidence of any right, yet by reason of it being void, it cannot have the effect of nullifying the tax sale certificate theretofore issued to the county and the county could now by observing the usual procedure obtain a tax deed valid upon its face but until such procedure is had the time for re-

demption has not expired hence the prohibitions of said Chapter 123 do not apply. If it is a fact appearing of record that the proper notices were posted and all things were done which would have entitled the county to a valid tax deed it is very probable that the county could now wholly disregard the deed in question and cause another deed proper in form to be issued to it, but until that is done, the whole question is still open to contest not only as to the validity of the deed they now hold, but as to the validity of the assessment and levy and of course all assessments and levies subsequent to the issuance of the deed are open to contest.

If after considering all the facts connected with this case the board reaches the conclusion that there is now existing a bona fide dispute as to the validity of these taxes from any cause whatsoever, and that the interests of the county will be better subserved by compromising the same, the board undoubtedly has the power and authority to make such compromise, and this compromise when made may extend to any period that may be named by the board, that is, they may compromise all of the taxes up to and including the present year or up to and including any other prior year. This is a matter which rests in the discretion of the board.

The clause, "has become the purchaser of real estate, etc." as used in said Chapter 123, might be construed to refer to the tax sale certificate rather than to the deed, and the further clause, "sell the same at public auction," might also be construed to have reference to the sale by the county of its right under the tax sale certificate prior to the issuance of the deed, but this statute has reference to a sale of the property and does not prohibit the compromise of a disputed claim and the purchaser from the county whether of the right or estate obtained by the county under the tax sale certificate, or of the right or estate obtained by the county under the tax deed, would get no better title than the county held at the time of the sale, and if the proceedings under which the tax sale certificate or the tax deed were issued, were void, such purchaser would have no title at all. If the county were making a sale of this property, then it might be held that the provisions of said Chapter 123, as to the amount which must be received, were binding, but the question here is the right of the county to compromise a disputed claim respecting the validity of the taxes.

This compromise if made had perhaps better be by order than by deed and we enclose herewith a general form of such order which may be of some service to you in drawing the order to be made by the board on the particular facts as they may be shown.

Opinion 3 attorney general p. 40 is prior to enactment of said Chapter 123.

Very truly yours,

ALBERT J. GALEN,  
Attorney General.

IN THE MATTER OF THE COMPROMISE OF TAXES ON CERTAIN REAL ESTATE IN THE TOWN OF CASTLE, MEAGHER COUNTY, MONTANA.

This matter coming on for the consideration and action of the board of county commissioners of Meagher county, Montana, at a regular meeting of said board (or at an adjourned regular meeting; or at a special meeting of said board duly and regularly called) on September ....., 1911, upon the offer of ..... to compromise and settle a disputed claim for taxes for the years 1894 to and including the year 1911 on the following lands, to-wit: .....; and it appearing to the board that not any taxes have been paid on said land or any part thereof for the said years 1894 to and including 1911; and it further appearing that said lands were offered for sale for delinquent taxes for the year 1894, and there being no bidders therefore were struck off to said county and a tax sale certificate was issued to said county therefor, bearing date February 1st, 1895, and that on June 15th, 1903, a tax deed was issued to said county, which deed is similar to the deed held to be void on its face by the supreme court of the state of Montana in the case of Rush v. Lewis & Clark county, reported in 36 Mont. at p. 566; and it further appears that there is a bonfide dispute as to the validity of said taxes, tax sale certificate and tax deed and as to the validity of said tax and the liability of said lands for taxes since the issuance of said tax deed, and it further appears that the said ..... is now the owner or claimant of said lands and that he has submitted to said board an offer to compromise the said taxes for the years 1894 to 1911 and to pay to said county the sum of ..... in compromise of said taxes for the years 1894 to 1911 inclusive, and it appearing to said board that the said taxes, tax sale certificate and tax deed are of doubtful validity and that the value of said land is far less than the amount of said taxes, penalties and interest, and that said land cannot at any time be sold for the amount of said taxes, penalties and interest; and it further appearing that said county is not receiving any income from said land and that the best interest of the county require that said offer of compromise and settlement be accepted.

WHEREFORE, It is hereby ORDERED that said offer of compromise and settlement be and the same is hereby accepted, and in consideration of the payment to the county treasurer by said ....., of the said sum of ....., all the taxes, tax sales and tax liens due or held by the county of Meagher, State of Montana, on or against the lands above described for each and every year prior to and including the year 1911 be and the same are hereby satisfied and cancelled, and that said tax deed held by the county against said land be and is

hereby acknowledged to be wholly void, and any and all rights, interests and estates which said county now has in or to said lands and each and every part thereof by virtue of said taxes or any part thereof, or by virtue of any proceedings had by reason of said taxes be and the same is hereby assigned, transferred, set over, and conveyed to said .....  
....., it being understood that this compromise and agreement includes, satisfies and discharges all claims of the said county for taxes of whatsoever nature prior to and including the year 1911.

It is further ordered that this acceptance of said offer of compromise, and order, be spread upon the minutes of said board, be signed by the chairman of said board, and attested by the clerk thereof, and that a certified copy thereof be made and delivered to said .....  
....., and that the county clerk of said county write upon the margin of said tax deed as the same appears of record, the word "void," and make reference to this order by giving the date and the page and volume of the commissioner's records in which same may be found.

.....,  
Chairman, Board of County Commissioners.

Attest: .....

Clerk.