

Taxes, on Personal Property. Lien, on Personal Property Tax. Tax Lien, on Personal Property.

Where the owner of personal property owns no real estate there is no lien upon the personal property for taxes but the same should be collected by the county treasurer in accordance with the provisions of Sec. 2683 et seq., Revised Codes.

December 23, 1911.

Hon. D. W. Doyle,
County Attorney,
Choteau, Mont.

Dear Sir:

I acknowledge receipt of your letter of the 19th inst., in which you request my official opinion upon the following questions:

Has the county a lien on personal property for taxes that is prior to a mortgage given on property before the first Monday in March where the owner of personal property owns no real estate?

Has the county a lien on personal property for taxes that is prior to a mortgage given after the first Monday in March and after the property has been assessed but before the county treasurer has seized the property for taxes when the person owning the personal property does not own any real estate?

This question was finally passed upon by the supreme court of this state in the case of Walsh ve. Croft, 27 Mont. 407, in which the Supreme Court after discussing the various statutes of the state respecting the assessment of personal property says:

"The court in effect held that in all cases whenever taxes duly levied on personal property are not paid, such property can be taken by the treasurer from the possession of an innocent purchaser who has bought the same in good faith and the same be sold by him to recover the said tax; and that he may do this because the people have a lien thereon for such taxes. There is no such lien on personal property when the owner does not also own real property."

This seems to be definite as to both questions propounded by you. This case has not in any manner been modified or reversed by the supreme court.

This same theory, however, is further fortified by the provisions of sections 2683, 2684 and 2657 of the Revised Codes. Sec. 2683 providing as to the duty of the assessor upon discovering personal prop-

erty the tax upon which is not a lien upon real property to report such discovery to the treasurer whose duty it is to immediately collect said tax.

And Section 2684 providing that the treasurer may collect by seizure and sale of any property owned by the person. And Section 2657 in providing the manner in which the sale should be conducted provides that it shall be by seizure and sale of any personal property owned by the delinquent.

The last two sections above mentioned apparently contemplate that there is no lien upon the particular personal property assessed for provision is made for the seizure and sale of any personal property owned at the time of such seizure and sale, by the person. It is not the particular property taxed that may be seized by the treasurer and if a lien existed upon the particular property the treasurer would be confined to the foreclosure of his lien in the first instance. Each of these sections further provide for the seizure of property owned by the person at the time of such seizure which necessarily contemplates a right in such person to transfer or mortgage such property.

It is, therefore, my opinion that there being no lien on personal property for taxes where the owner of personal property owns no real estate that the answer to each of your questions must necessarily be no.

Yours very truly,

ALBERT J. GALEN,

Attorney General.