

Personal Property, Assessment of. Assessment, of Personal Property. Taxation, of Personal Property. Tax Sales, of Personal Property.

Sec. 2684, Revised Codes, having to do with the assessment of personal property applies to all cases wherein in the judgment of the assessor, the taxes levied thereon are not a lien upon real estate.

Tax sales are to be conducted by the county treasurer with respect to personal property by summary proceeding, as provided in the Codes, and no action at law is necessary as a condition precedent to vest the treasurer with jurisdiction.

May 29th, 1913.

Hon. G. M. Houtz,
State Tax Commissioner
Helena, Montana.

Dear Sir:

On the 26th instant you referred to this office for answer two questions submitted by Mr. Oscar Skeen, county treasurer of Meagher County, the questions submitted being:

"1. Do you understand Sec. 2684 to apply to all personal property taxes or only special cases; for instance, a band of sheep or cattle about to leave the county?

"2. Secs. 2658 to 2663 are very indefinite as to the manner of seizure of property. Has the assessor authority to seize and sell without papers or must he proceed the same as any other citizen in an action to recover money by seizing and selling property?"

With reference to the first question, you are advised that Sec. 2684 first appeared as Sec. 3941 of Chap. 119 of the Laws of the Eighth Session, 1903, p. 225. Incidentally it may be added that no reference to this section is made in the title of the act, but since we are not called upon to pass upon any constitutional question, this omission may be passed without notice. The evident intention of the Legislature was to amend Chapter 9 of Part 3, Title 10, of the Political Code of 1895. This chapter provided for the collection by the assessor of the taxes on all personal property when in his

opinion the taxes were not a lien upon real property sufficient to secure the payment thereof, and the section to which you refer was evidently intended to correct a defect which had been made to appear, namely, that the Legislature has no power to vest any person other than the treasurer with the power to collect taxes.

Mutual L. I. Co. v. Martien, 27 Mont. 439.

The new section makes it the duty of the county treasurer to collect the taxes on all personal property, and this section is somewhat more comprehensive than that found in the old law. By reference to the title of the chapter, wherein this section is found, it will be observed that the chapter has to do with the collection of taxes on personal property when not a lien on real estate. By reference to the section which precedes the one under discussion it will be found that the subject matter has not been altered, and it is specifically set forth that it shall be the duty of the assessor upon discovering any personal property in the county, the taxes upon which are not in his opinion a lien upon real property sufficient to secure the payment of such taxes, to immediately make a report to the treasurer, setting forth the nature, amount and assessed valuation of such personal property, where the same is located and the name and address of the owner, claimant, or other person in possession of the same.

I am of the opinion, therefore, that the section concerning which you inquire is not restricted to special cases, as for instance migratory livestock, but that it applies to all personal property within the county whether it be movable or immovable, and the taxes upon which are not, in the opinion of the assessor, a lien upon real estate.

As to the second question, you are advised that in my opinion Secs. 2658 to 2663 provide a method for the seizure and sale of personal property for taxes, and that if the seizure and sale be made and conducted substantially as provided for in these sections, the treasurer would be lawfully acting within the scope of his authority. Indeed, I am of the opinion that it becomes the treasurer's duty to conduct sales as provided by these sections, and that the law does not contemplate that as a condition precedent he shall proceed as any other citizen by action to recover money.

Sec. 2629 et seq. provides for the seizure and sale of both real estate and personal property, and it has been held by our supreme court that when real estate is seized and sold substantially as provided for by the provisions of these sections, the sale is valid.

Conklin v. Cullen, 29 Mont. 38.

The sections, however, to which you refer apply wholly to the seizure and sale of personal property, but since our court has held that real estate may be seized and sold without a civil action at law, but in the manner pointed out by the statute, it follows without argument that personal property should also be seized and sold in the manner as pointed out by the statute. As to whether or not this

remedy is exclusive and that an action at law may not be instituted,
it is unnecessary to decide.

Very truly yours,

D. M. KELLY,
Attorney General.