

Taxation of Personal Property, Collection of. Seizure, of Personal Property for Taxes. Lien, of County for Taxes on Personal Property. Right of County to Seize Property for Taxes, When Same Has Been Attached.

The right of the county to seize personal property for taxes is superior to the right obtained by an attachment or execution sale.

October 6, 1915.

Hon. Frank Hunter,
County Attorney,
Miles City, Montana.

Dear Sir:

I am in receipt of your letter of the 22nd ultimo, submitting the question

as to the right of the county to seize and to sell personal property for the tax thereon, where such property has subsequent to the assessment been levied upon by an attaching creditor."

It is true that the Supreme Court of this state has held that the county does not have any specific lien upon personal property where the owner thereof does not own real estate. The question as to whether the county has a lien upon the personal property where the owner thereof does own real estate being expressly reserved by the Supreme Court.

Walsh, et al, v. Croft, 27 Mont. 407.

The sections referred to in the decision above cited, are now Sections 2600, 2601 and 2602 of the Revised Codes. The decision in the case of State v. Johnson, 16 Mont. 573, does not appear to justify the conclusion of the annotator, as that case is cited under Section 2600, for the court in that case stated:

"The only question presented for our determination now is as to whose duty it is to extend the city taxes of the city of Butte on the tax book for the year 1895."

The Walsh case was decided on January 31, 1903. Subsequent to that decision, Chapter 119 of the Session Laws of 1903 was enacted and took effect on March 7, 1903. This section confers authority upon the county treasurer to seize the property of the delinquent tax payer and makes the treasurer liable on his official bond for his willful failure or neglect to collect such personal tax. By the terms of this section which now appears in the Code as Section 2684, the treasurer is given until the first day of November in which to make the seizure and sale of the personal property tax. Section 2684 of the Revised Codes, is substantially the same as Section 2820 of Kerr's Cyclopedic Code of California. The California court in Rode et al v. Siebe, 51 Pac. 869, discussed the section in a general way, but we have not been able to find any decision directly in point as to the question here raised. The case of Walsh v. Croft in 27 Montana, is not in point as to Section 2684, for that section was not law at the time of that decision. The fact that the county does not have a specific lien on the property for taxes due,

does not necessarily negative the proposition that the county has a superior right to obtain such lien by the seizure of the property, and under the provisions of this section the treasurer does not appear to be limited to the particular property assessed, for the phrase used is "Any personal property." If the owner of personal property can relieve his property from the charge of taxation by transferring title thereto at any time subsequent to the time taxes attach, and prior to its seizure, then the law for the collection of personal tax is of little force or effect; at least it would be very easy to defeat the purpose of the law. It is also fundamental that the rule of caveat emptor applies both to a judgment and to a purchase at execution sale.

McAdoo v. Black, 6 Mont. 601, 13 Pac. 377.

as it does also to a sale of personal property for delinquent taxes.

Birney v. Warren, 28 Mont. 64, 72 Pac. 293.

While the question is not wholly free from doubt, I am of the opinion that under the law of this state, the right to seizure of property for the satisfaction of a tax due thereon, is a right superior in the county, and that the treasurer may at any time prior to November 1st of the year in which the property is assessed, seize personal property of the delinquent tax payer for the satisfaction of such tax, where, of course, same is not a lien upon real estate.

Yours very truly,

J. B. POINDEXTER,

Attorney General.