

Constitutional Law — Certificate of Purchase — State Lands—Cancellation—School Lands—Taxes.

Section 1870, Revised Codes of Montana, 1921, which requires the state to pay to the county the county taxes levied upon the interest of a purchaser of state lands for the year in which default is made by such purchaser and certificate of purchase cancelled, such payment to be made out of the installment paid by the purchaser to the state, is in

conflict with Section 2, Article XII, of the Constitution of Montana, and the state is therefore not required to pay such taxes.

H. V. Bailey, Esq.,
Register State Lands,
Helena, Montana.

My dear Mr. Bailey:

Your letter was received in which you state that on August 6th, 1923, the State Board of Land Commissioners cancelled State Land Certificate of Purchase No. 6464 for the NW $\frac{1}{4}$ of Section 16, Twp. 25 N., Range 3 W., on account of non-payment and failure to redeem after due notice, and you request an opinion as to whether or not the state is required to pay to the county in which the land is situated its proportion of any taxes that have been levied upon the land for a year in which the state has collected an installment of purchase money upon the land.

Under Section 1868, R. C. M. 1921, only the interest which a purchaser has in lands purchased from the state is taxable, and the extent of that taxable interest is fixed by the statute which provides that no purchaser of state lands shall be taxed for a greater percentage of the value of the land than the ratio which the amount actually paid on the purchase price bears to the total purchase price. The statute also, in the case of a sale for taxes, limits the sale to the interest of the purchaser in said lands.

Section 1870, R. C. M. 1921, relating to the reversion of lands to the state because of default by the purchaser and the disposition of taxes that have been levied thereon, is as follows:

"In case any lands sold under the provisions of this Act shall revert to the state, for any cause whatsoever, the Register of State Lands shall at once notify the Assessor and the County Treasurer of the county in which the land is situated, and upon the receipt of such notice, it shall be the duty of the Assessor to cancel any assessment of said land for that year, and of the County Treasurer to rebate all taxes that have been charged against said land for that year; provided, that the state shall pay to the county in which said land is situated its proportion of any taxes that may have been levied upon said land for a year in which the state has collected an installment of purchase money upon said land, said payment to be made out of such installment."

Under this section, if, for the year 1923, any assessment was made of the interest of the purchaser in the lands mentioned in your letter, and the state received no installment upon the purchase price during that year, the assessment should be cancelled. If the state did receive an installment of the purchase price during the year

when the lands reverted to the state, or in any other year that taxes were levied against the interest of the purchaser in the lands and which are unpaid at the time of the reversion, the statute has attempted to require the state to pay to the county the county's proportion of the taxes levied and unpaid, said payment to be made out of such installment.

The proceeds arising from the sale of the land in question, upon their receipt, become a part of the public school fund of the state. Section 3 of Article XI of the Constitution is as follows:

"Such public school fund shall forever remain inviolate, guaranteed by the state against loss or diversion, to be invested, so far as possible, in public securities within the state, including school district bonds, issued for the erection of school buildings, under the restrictions provided by law."

The installments received are a part of the purchase price of the land, and are moneys which the state receives under and by virtue of contract—a part of the consideration mentioned in the contract. The county is not a party to this contract, and has no contractual interest in either the land sold or the consideration to be paid. Its only concern is the taxability of the interest of the purchaser in the lands, and in this respect, it is on no different footing than the state itself, as the state taxes, as well as county taxes, are levied against the interest of the purchaser in the land. The county, therefore, has no legal claim to any part of the consideration of the contract. The Constitution directs where this consideration shall be placed upon its receipt, that is, in the public school fund, and being a part of that fund, under Section 3, Article XI of the Constitution, it must be held inviolate, guaranteed against loss or diversion.

There is no more authority for requiring the county taxes to be paid out of the school fund than there is for requiring the state taxes to be paid out of it. The Legislature has attempted to compel the former, but has said nothing about the latter. As it stands, the state loses its taxes, which, if paid, would go into the revenue funds of the state. If they were paid out of the installments received from the purchaser of the lands, it would amount to transferring from the public school fund that amount of moneys to the revenue funds of the state. This is prohibited by the Constitution, and a transfer of money from the public school fund to the county treasury stands upon the same ground and is likewise prohibited.

As stated above, only the interest of the purchaser in this land is taxable, and upon a tax sale that is all that may be sold. A purchaser of that interest at a tax sale, under Section 1869, R. C. M. 1921, is substituted for the original purchaser, and is entitled to have a new certificate of purchase issued to him. If he wishes to keep what he purchased at the tax sale, it is necessary for him to make the deferred payments when due under the certificate of purchase; otherwise, the certificate is cancelled and the land reverts

to the state. The interest of the purchaser of these state lands, under a certificate of purchase, is always attended with the obligation to make the deferred payments, if he would preserve that interest, and this obligation is never discharged except by performance. His interest is always subject to termination upon default in this regard, and any person dealing with that interest is charged with notice of its uncertain character. The lien of the county upon the interest of the purchaser for taxes levied against that interest is no stronger than the interest itself, and when that interest ceases to exist, so likewise does the lien upon it for taxes. The thing against which the taxes were a lien ceases to exist after the state cancels the certificate of purchase, and it is axiomatic that a lien cannot exist unless there is something in existence upon which it is a burden. Therefore, after cancellation of the certificate of purchase, the lien of the county for its taxes, as well as the state for its taxes, ceases, and the land reverts to the state unburdened by any lien for taxes assessed against the interest of the purchaser in the lands.

The interest of the state in these lands sold to a purchaser, under a certificate of purchase, is its ownership of the legal title and the right to terminate the purchaser's interest, in case of default in complying with the terms of the certificate. These school lands are held by the state for the benefit of the schools of the state, and upon their sale upon deferred payments, the state must receive the full consideration therefor, or the land must revert to the state, and the state has so provided by its contract with the purchaser. The interest of the state in these lands is not taxable. The effect of Section 1870, R. C. M. 1921, requiring the state to pay to the county the county taxes assessed against the interest of the purchaser after that interest has been terminated by the state, is to tax the right of the state to terminate the interest of the purchaser in accordance with the certificate of purchase. It transfers the tax from the purchaser to the state. This cannot be done:

"The property of the United States, the state, counties, cities, towns, school districts, municipal corporations and public libraries shall be exempt from taxation; * * *"

Sec. 2, Art. XII, of State Constitution.

In no event can the Legislature require the state to pay the tax of another. To require the state to pay the county taxes levied against the property of the purchaser—his interest in the lands purchased—is to require the state to make a donation in the sum of the county taxes levied against the interest of the purchaser in the lands. This is prohibited by Section 1 of Article XIII of our Constitution, which provides:

"Neither the state, nor any county, city, town, municipality, nor other subdivision of the state shall ever give or loan its credit in aid of, or make any donation or grant, by

subsidy, or otherwise, to any individual, association, or corporation, or become a subscriber to or shareholder in, any company or corporation, or a joint owner with any person, company or corporation, except as to such ownership as may accrue to the state by operation or provision of law.”

It is, therefore, my opinion that, for the reasons hereinbefore stated, that part of Section 1870, R. C. M. 1921, which requires the state to pay to the county the county taxes levied upon the interest of a purchaser of school lands after the state has terminated that interest by cancellation of the certificate of purchase, is unconstitutional and void, and that the state is not required to make said payments as provided in said statute.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.