Lien—Personal Property—Real Property—Taxes.

The holder of the legal title should be considered the owner of the land and the lien of the tax upon the personal property of the purchaser would not attach as a lien where such purchaser has only contracted to purchase the land.

Robert Schafer, Esq.,
Chairman Board of County Commissioners,
Kalispell, Montana.

My dear Mr. Schafer:

You have requested my opinion upon the following statement of facts, to-wit:

> "Last spring the Assessor made an assessment against George F. Stannard and Courtney Payne. This was on household goods, automobile and 2 horses of Courtney Payne's and 160 acres of land belonging to Stannard. Payne had bought the land under contract from Stannard and was cutting logs off the land. In November Stannard offered the County Treasurer the tax on the land only and she refused to accept the tax on the land without the personal property tax. Payne sold the lumber off the land, sold his personal property and left the state. County Attorney holds that since the contract was not on record, Stannard cannot be held for the personal property tax; also that the Board of County Commissioners cannot cancel the personal property tax since it was not illegal."

In an opinion of this office found in Vol. 9, Opinions of Attorney General, page 440, the question presented was whether personal property taxes are a lien upon real estate bought upon contract for deed. I quote the following from the opinion:

> "As to your second question, it was held in Knapp v. Andrus, 56 Mont. 37, and also in Wright Land & Investment Company v. Even, 57 Mont. 1, that the purchaser of lands under contract for deed acquires a mere equity in the land and that the title is still in the seller. Under this rule personal property taxes assessed to the purchaser of land would not con-

stitute a lien upon the land, but such taxes assessed to the seller would constitute a lien upon the land sold, title to which had not yet passed to the purchaser."

Section 2153, Revised Codes of 1921, makes every tax due upon personal property a lien upon the real property of the owner thereof, from and after twelve o'clock M. of the first Monday in March.

The word "owner" has been given a great variety of meanings. It has been defined as "a person who has an estate in fee simple; the legal owner; or who owns the legal estate in lands; the person entitled to the legal estate in the land; the person having the legal title." (See Owner, 29 Cyc. 1549.) It has also been defined as "one who has entered into a contract to sell land until the deed has actually been delivered and recorded." (Miller v. Mead, 127 N. Y. 544, 548, 28 N. E. 387, 13 L. R. A. 701.) On the other hand, it has been defined as "one in possession of the property under a valid and subsisting contract of purchase." (Aetna F. Ins. Co. v. Tayler, 16 Wend. (N. Y.) 385, 396, 30 Am. Dec. 90.)

Manifestly, it would be unfair to claim that both the vendor and the purchaser were the "owner" within the meaning of Section 2153 and to charge the personal property tax of each as a lien against the land, where it had been sold under a contract of purchase.

It is, therefore, my opinion that the holder of the legal title alone should be considered the owner of the land and that the lien of the tax upon the personal property of the purchaser would not attach as a lien upon the land, but that the tax in this case should be collected from the owner of the personalty as other personal taxes are collected where the owner does not own any real estate.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.