

Debenture Certificates—Counties—County Commissioners—County Treasurer—Irrigation Districts—Interest—Penalties—Taxes.

Commissioners of an irrigation district are without authority to sell debenture certificates of the district for less than par.

Irrigation district taxes, upon the authority of the Thomas case, fall within the operation of Chapter 63, Laws of 1923, and the penalty should be remitted, and such taxes only bear 7% interest when the case falls within the other terms of the statute.

Chapter 63, Laws of 1923, does not apply where debenture certificates were sold and transferred prior to its passage.

Lands in an irrigation district may not be sold for less than the total of all taxes, interest and penalty, except in those cases where the penalty has been remitted.

Debenture certificates should be issued simultaneously with the issuance of the certificate of tax sale to the county.

Debenture certificates may be issued to cover taxes due for other than the present year.

W. H. Gray, Esq.,
County Attorney,
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My dear Mr. Gray:

You have requested the opinion of this office on several questions relating to irrigation district debenture certificates.

Your first question is:

“Can irrigation district debenture certificates be sold for less than par?”

Section 7243, R. C. M. 1921, provides for the issuance of debenture certificates whenever lands are struck off to the county at tax sales.

Section 7244 provides for the sale of the certificates by the Board of Commissioners of the irrigation district. This section provides as follows:

"The certificates provided for by the preceding section hereof shall be assignable, and may be sold or negotiated by the Board of Commissioners of said irrigation district and the proceeds thereof delivered to and deposited with the County Treasurer of said county for proper credit to the respective funds of said irrigation district, and upon the sale, negotiation, or transfer thereof, as above provided for, the lien of said irrigation district shall vest in the purchaser thereof, and is only divested by the payment to the purchaser or the County Treasurer of said county, for his use, of the sum for which said certificate is issued and one per cent additional for each month that elapses from the date of such certificate until redeemed as hereinafter provided for."

The statute is silent on the question whether the Commissioners may sell the certificates for less than par. However, Section 7244 provides that the lien of the district shall vest in the purchaser and is only divested by the payment to the purchaser or to the County Treasurer for the purchaser of the sum for which the certificate was issued, and one per cent additional for each month from the date of the certificate until redeemed.

And Section 7245 provides that, upon redemption, the County Treasurer shall pay to the holder of the certificates the sums for which the same were issued, with interest as therein provided to the date of redemption.

Section 7246 provides in substance that, if the land be not redeemed, the County Commissioners shall sell the same; provided that it shall not be sold for any less sum than the amount of taxes and assessments represented by the certificates, inclusive of interest thereon.

The obvious purpose of these provisions is to insure to the holder of the certificates the payment of the full sum for which they were issued, together with interest, as provided for in the certificates. No exception was made by the Legislature concerning the amount to be received by the holder of the certificates when they were held by the irrigation district and no assignment had been made of the certificates. The omission to make such an exception indicates the legislative intent that the irrigation district shall receive the amount of money represented by the certificates, together with accrued interest, before negotiating the certificates.

It is, therefore, my opinion that the Commissioners of an irrigation district are without authority to sell debenture certificates of the district for less than par.

Your second question is:

"In what way does the new 7 per cent tax law apply to taxes against which debenture certificates have been issued as to both interest and penalty charges?"

Section 1 of Chapter 63, Laws of 1923, provides as follows:

"That from and after the passage and approval of this Act, any person having an interest in real estate heretofore sold for taxes to any county or which has been struck off to such county when the property was offered for sale and no assignment of the certificate of such tax sale has been made by the county making such sale, shall be permitted to redeem the same by paying the original tax plus seven per cent interest from the date of sale."

The Supreme Court of this state in the case of *Thomas v. City of Missoula*, 226 Pac. 213, in construing the term "taxes," as used in Chapter 96 of the Laws of 1923 relating to the semi-annual payment of taxes, held that it included and embraced special improvement assessments of a city as well as general and ad valorem taxes.

There is no substantial distinction between irrigation district taxes and special improvement district assessments.

It is, therefore, my opinion that irrigation district taxes would, upon the authority of the *Thomas* case, be held to be within the operation of Chapter 63, Laws of 1923, and that the penalty should be remitted, and the tax only bear 7 per cent interest when the case falls within the other terms of the statute.

In such cases, however, where the debenture certificates had been sold and transferred prior to the passage of Chapter 63, the statute must be held not to apply, for, if so, its operation and effect would be to impair the obligation of the contract evidenced by the certificates.

The general rule regarding the constitutionality of such statutes is stated in 12 C. J. 1002 as follows:

"The law in force at the time a tax sale is made becomes a part of the purchaser's contract, and any subsequent statute which attempts to deprive him of any substantial right secured to him by the existing law is void as impairing the obligation of contracts. Thus a statute is void which attempts to annul tax sales previously made, or to convert a certificate of sale into a certificate of delinquency, or to deprive the purchaser of the right to a deed, or to extend the time of redemption, or to dispense with reimbursement to the purchaser as a condition of redemption, or to reduce the amount to be paid the purchaser on redemption."

Your third question is:

"If taxes are not redeemed against which debenture certificates have been issued can the Board of County Commissioners sell such land for less than the total of all taxes, interest and penalty?"

This question is answered by the provisions of Section 7246, R. C. M. 1921, which treats of the powers of the Board of County Commissioners to sell the land when it is not redeemed. It provides, in part, as follows:

* * * "and no lands and premises so held by any county, and against which the certificates provided for by this title have been issued, shall, upon such sale, be struck off or sold for a less sum than the amount of taxes and assessments of said irrigation district represented by said certificates, inclusive of the interest thereon, in addition to the state and county taxes, if any, against the same."

This section clearly prohibits the sale for less than the total of all taxes, interest and penalty, except, of course, in those cases where the penalty has been remitted by Chapter 63, Laws of 1923.

Your fourth question is as follows:

"In case such land can be sold for less than the total of such taxes, interest and penalty, does the holder of the debenture certificate receive the full amount due him or does he suffer loss the same as the county?"

It is my opinion that in those cases where Chapter 63, Laws of 1923, apply, as pointed out in the answer to your second question, the holder of the debenture certificates must suffer the loss occasioned by the reduction of the interest and the remission of the penalty.

Your fifth question is:

"When must such debenture certificates be issued?"

It is my opinion that the Legislature contemplated, by Section 7243, R. C. M. 1921, that the debenture certificates should be issued simultaneously with the issuance of the certificate of tax sale to the county.

Your sixth question is:

"Can debenture certificates be issued at this time to cover taxes for the years 1917 to 1923?"

The failure of the County Treasurer to issue the debenture certificates at the time of issuing the certificate of tax sale was an omission to perform a legal duty enjoined by law and mandamus lies

to compel the performance of this duty. (State ex rel. Furnish v. Mullendore, 53 Mont. 109.)

If this duty may be compelled by mandamus, I see no reason why it may not be voluntarily done.

It is, therefore, my opinion that your sixth question must be answered in the affirmative.

Your seventh question is:

“If they are issued now, in what way is the 7 per cent law applied?”

I believe the answer to the second question, together with the interpretation of Chapter 63, Laws of 1923, made by this office in an opinion rendered to Raymond Sheldon, answers your seventh question.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.