

**Tax Deeds—Deeds—Redemption—Irrigation Districts—
Taxes.**

The holder of a tax deed may take an assignment of a tax sale certificate without redeeming the property. The holder of a tax deed is required to pay subsequent taxes to protect his title.

A tax deed may not be issued on irrigation taxes only.

October 21, 1927.

E. B. Brown, Esq.,
County Treasurer,
Sidney, Montana.

My dear Mr. Brown:

Your letter was received, from which I quote the following:

“A corporation in this county holds a sheriff’s deed on a piece of land. Now it has bought an assignment of a tax sale certificate for 1922 covering irrigation tax only and is applying for a tax deed to this land in order to cut out the holder of a first mortgage.”

You state that several questions arise in connection with this.

“First, was this office in error when assignment of tax sale certificate was issued instead of a certificate of redemption to this company holding a sheriff’s deed? Second, does the applicant for a tax deed have to pay all subsequent taxes to the state and county or may a tax deed be issued on irrigation taxes only?”

In my opinion, your office was not in error in issuing a tax sale certificate instead of a certificate of redemption. I know of no reason why the owner of land may not take an assignment of the certificate of sale if he wishes to do so. The county has obtained its money for the taxes and has no further interest in the matter. If the assignee wishes a tax deed he is, of course, entitled to one by giving proper notice after the expiration of thirty-six months.

Answering your second question, one who has acquired a tax deed would, of course, be required to pay subsequent taxes if he desired to protect his title; that is to say, that a subsequent sale for taxes and a deed thereon wipes out all previous tax titles.

As to whether a tax deed can be issued on irrigation taxes only, it is my opinion that it cannot. Section 1 of chapter 71, laws of 1923, provides:

“Such County Treasurer shall not collect or receive or receipt for any taxes or assessments levied for county purposes upon real estate situated wholly or in part within any irrigation or drainage district upon which an assessment for the purposes of such irrigation or drainage district has been levied, unless the said assessment levied for such irrigation or drainage district purposes be paid at the same time.”

Section 1 of chapter 89 of the laws of 1925 provides:

“At all sales of all lands for delinquent taxes where all, or a portion, of such delinquent taxes are taxes and assessments levied and assessed by any irrigation district against the lands to be sold, the commissioners of such irrigation district, if there be no other bidder for such land at such tax sale, may bid therefor the total amount of all delinquent taxes and assessments, penalty and interest against such land, and thereupon the County Treasurer shall strike off said lands to such irrigation district and issue certificate of tax sale to said irrigation district the same as such certificates of tax sales are issued to other purchasers.”

Section 2 of this same chapter provides:

“Any irrigation district may purchase the certificate of tax sale issued to any county for lands sold at tax sale against which any of its taxes and assessments are delinquent or, if deed therefor has issued to the county, may purchase such lands from the county by paying to the County Treasurer of the county making the sale all state, county, city, school district, and other delinquent taxes together with penalty, interest and costs of publication and sale.”

And section 3 reads as follows:

“When there has been no redemption of the lands so sold at tax sale to an irrigation district or any other person in the manner and within the time hereinafter allowed by this Act for the redemption of lands from such tax sales, the County Treasurer of the County within which such lands are situated, shall issue tax deed therefor to such irrigation district, or other holder of certificate of sale.”

It is apparent from these provisions that all taxes for state, county and school district purposes must be paid in addition to the irrigation district tax and a sale cannot be made for the irrigation district tax alone.

The question of whether one who holds a sheriff's deed to land can cut off a mortgage lien by taking a tax deed is one that does not concern the county or this office, and hence I express no opinion thereon.

Very truly yours,

L. A. FOOT,

Attorney General.