

Special Assessments—Taxes—Sale—County Commissioners—Delinquent Taxes.

The lien of special improvement assessments is not lost by the failure of the city clerk to certify it to the county treasurer for collection.

The sale of property acquired by a county for delinquent general taxes does not wipe out the lien of special assessments not included in the sale for delinquent taxes.

November 12, 1927.

Board of County Commissioners,
Fort Benton, Montana.

Gentlemen:

Your letter was received relative to property upon which there are delinquent special improvement and other taxes. The special taxes were not certified to the county treasurer by the city clerk as required by section 5216 R. C. M. 1921 where the city has not provided by ordinance for the collection by the city treasurer of taxes levied by it.

The property in question was sold for the general taxes, and I assume that the county has acquired a tax deed to the property and is now contemplating a resale under section 2235 R. C. M. 1921, as amended by chapter 85, laws of 1927.

It is my opinion that a sale for taxes which did not include special taxes does not wipe out the lien of the special tax. While an officer may become personally liable for the failure to perform his duties in respect to collection and assessment of taxes, he cannot relieve the property from the tax lien by failure to perform his official duties as required by law.

Section 2235, as amended, provides:

“All sales heretofore made, or attempted to be made, by counties of property purchased for taxes, and the deeds to purchasers from such counties, whether or not irregular or void for any reason, or because of any irregularity or failure to follow the directions or comply with the provisions of any statute relating to such deeds, or relating to the taxation or sale of such property, for taxes, or the time or manner of redeeming property or of securing a tax deed, are hereby confirmed, and said deeds and any deed or contract executed under this section shall vest in the purchaser, as of the date of said deed or contract, all the right, title, interest, estate, lien, claim and demand of the State of Montana, and of the county, in and to said real estate.”

It is to be observed that this section covers all the right, title, interest, estate, lien, claim and demand of the state of Montana and of the county. It does not include any lien, claim or demand of a city,

and in my opinion such a sale does not wipe out the lien for special improvement assessments even though they have not been certified to the county treasurer, as required by statute.

It is also my opinion that the county commissioners cannot include the special assessments at this time and that the officers at the resale would turn over the same free from liens of state and county taxes only.

Very truly yours,

L. A. FOOT,
Attorney General.