

Redemption—Counties—Penalty—Interest—Rescission.

The county, upon tendering the amount paid for the redemption of property from delinquent tax sales may rescind the certificate of redemption when it was issued without the payment of the penalty and full interest.

R. N. Hawkins, Esq.,
Assistant State Examiner,
Helena, Montana.

February 8, 1927.

My dear Mr. Hawkins:

You have requested my opinion whether there is any recourse for the county to recover penalties and interest that have been remitted by chapter 63 of the laws of 1923, and by the opinion of this office rendered on November 26, 1926.

By the decision of the supreme court, recently rendered, penalties and interest on delinquent taxes become a part of the obligation referred to in section 39 of article V of the constitution, and hence may not be diminished by the legislative assembly, or by anyone else.

This section, in speaking of this obligation, provides in part:

“Nor shall such liability or obligation be extinguished, except by the payment thereof into the proper treasury.”
Section 2152, R. C. M. 1921, also provides:

“Every tax has the effect of a judgment against the person, and every lien created by this title has the force and effect of an execution duly levied against all personal property of the delinquent. The judgment is not satisfied nor the lien removed until the taxes are paid or the property sold for the payment thereof.”

Hence, any attempt on the part of the officers of the county to permit a redemption of property from tax sales without the payment of penalties and interest was abortive and did not extinguish the obligation.

In my opinion, the certificate of redemption may be rescinded and set aside on the ground of mistake, upon the county restoring to the redemptioner the amount of money paid for the attempted redemption.

Very truly yours,

L. A. FOOT,
Attorney General.