

**Taxes—Merger—Counties—Tax Deeds.**

The lien of taxes is not merged when the county purchases property on which it holds a tax sale certificate, particularly where sufficient time has elapsed to enable the county to apply for a tax deed.

April 9, 1928.

J. H. McAlear, Esq.,  
County Attorney,  
Chester, Montana.

My dear Mr. McAlear:

You have requested my opinion whether, when property is struck off to the county for delinquent taxes and the county subsequently acquires the legal title by purchase, the tax lien becomes merged. You state that the property was struck off to the county for delinquent taxes in 1920 and that the county purchased the property in 1927.

The county should have applied for a tax deed rather than to have purchased the property. If the original owner of the property had any equity therein in 1927 it would be an inducement to exercise the right of redemption. If a tax deed had been applied for as provided by law and no redemption had been made the county would have acquired the title without the payment of anything to the original owner. If the original owner redeemed the property before the issuance of the tax deed the county would have been obliged to pay part of the tax to the state, a part to the school district in which the property was situated, and if the property were situated in a city or town, a part to such city or town. (State vs. McFarlan, 78 Mont. 156.)

Since the state and other political subdivisions thereof are entitled to some of the benefits of the tax lien there is no rule of law that merges the tax lien in the title acquired by purchase if the same may be purchased by the county under the circumstances related in your letter.

A merger of rights results only when the person who is bound to pay is also entitled to receive. (40 C. J. 650.)

I think it is a dangerous practice for counties to purchase property on which taxes have been delinquent for several years, as in this case, and where the county holds the certificate of tax sale, and particularly when sufficient time has elapsed since the issuance of a tax sale certificate to enable the county to apply for a tax deed.

The imputation may easily be made, and hard to disprove, that a purchase under these conditions results in the making of a donation to the original owner contrary to section 1 of article XIII, and kindred sections of the constitution.

Very truly yours,

L. A. FOOT,  
Attorney General.