

Insurance—Fire—Taxes—Liens.

Taxes may not ordinarily be recovered from insurance on property destroyed by fire unless the policy was for the benefit of lien holders.

W. F. Kindt, Esq.,
County Treasurer,
Winnett, Montana.

March 16, 1927.

My dear Mr. Kindt:

You have requested my opinion whether delinquent taxes may be recovered from an insurance company when the building upon which the taxes were delinquent was destroyed by fire.

Our statute, section 2154 makes the tax upon improvements a lien upon the land and improvements, and section 1996 defines the improvements as "all buildings, structures, fixtures, fences, and improvements erected upon or affixed to the land, whether title has been acquired to said land or not."

Unquestionably, therefore, the taxes in question were a lien upon the building destroyed. It does not follow, however, that the county has a right to any part of the proceeds of the insurance.

The general rule in this regard is stated in 26 C. J. 445, as follows:

"One who has a mere lien only on the insured property has no claim to the insurance money realized by the insured in the event of a loss of the property, for a claim on the insurance money can arise only out of contract. But where the insured has agreed to insure for the benefit of another, who has an interest in the subject of insurance, such other has an equitable lien upon the proceeds."

The county may recover the tax from the insurance only in the event that the insurance was for the benefit of the county, and this is a question of fact depending upon the wording of the policy. You should endeavor to secure a copy of the policy of insurance, and take the matter up with the county attorney and let him explore the mysteries of the policy and he will be able to advise you regarding your rights to any of the proceeds of the insurance.

Very truly yours,

L. A. FOOT,
Attorney General.