

**Taxation—Tax Sales—Tax Certificates—Tax Deeds.**

Where land was assessed for 1920 but no tax sale was had for that year and the land was subsequently sold at a tax sale for taxes for subsequent years the lien of the 1920 taxes is destroyed by the issuance of a tax deed upon the sale held for taxes subsequent to that year. If the land is redeemed from the outstanding tax certificates the 1920 taxes would still remain a lien upon the land. Where there are no delinquencies subsequent to the year 1920 the lien of the taxes for that year would remain upon the land and the county has an enforceable lien therefor.

James G. Wagner, Esq.,  
Deputy County Attorney,  
Plentywood, Montana.

August 8, 1929.

My dear Mr. Wagner:

You have requested an opinion of this office with reference to the right of the county to collect taxes for the year 1920 where (1) there are outstanding tax certificates subsequent to 1920; (2) where there have been no subsequent delinquencies since 1920.

Answering the first question, it is the opinion of this office that if deeds are issued upon the tax certificates issued for sales subsequent to 1920 that the deeds would operate to convey the land to the purchaser free from the lien of the 1920 taxes and the county could not sell the property for the 1920 taxes.

Section 2215 R.C.M. 1921 as amended by Chapter 85, Laws of 1927, provides that a tax deed shall be deemed to convey to the grantee the absolute title to the lands free of all encumbrances, except the lien for taxes which may have attached subsequent to the sale.

California had a somewhat similar statute and the Supreme Court of that state in *Dougherty vs. Henarie*, 47 Cal. Rep. 9, held:

“The general rule is that a sale and conveyance in due

form, for taxes, extinguishes all prior liens, whether for taxes or otherwise.”

The court then cited its statute which is similar to ours and held that the language was so explicit as to require no interpretation and to leave no room for construction, and held that under it the sale and deed conveyed the property free of prior taxes. To the same effect are many cases cited in 1913A Ann. Cas. page 675.

It is my opinion that the issuance of a tax deed destroys the lien upon the land for prior taxes and that by virtue of Section 2215 R.C.M. 1921, as amended, the purchaser receiving such deed would take the land free from the lien of the prior taxes.

However, if a redemption is made and no deed is issued, it is my opinion that the reason which impels the conclusion above does not apply. When the land is redeemed the force of Section 2215 as amended is not involved as no deed issues if redemption is made; neither is the owner of the land prejudiced by the sale from which redemption was made, as he merely paid a liability which he was required to pay by law, and if a sale were held for the 1920 taxes such action would merely result in compelling the owner to pay what he should have been compelled to pay at the time when the tax sale should have been held for the 1920 taxes and no estoppel could arise against the county as it has in no way misled him. He is required to know what taxes are a lien against his land and in this respect he differs from a purchaser at a tax sale as under the decisions above mentioned the courts hold that such a purchaser has the right to rely upon the offer of the county to sell him the property taxed for the amount of the taxes for which it is sold.

Where a redemption is made I see no reason why Section 2152 R.C.M. 1921 should not be given full effect. This section provides that the lien of the taxes is not removed until the taxes are paid or the property is sold for the payment thereof. The only reason that this would not apply when a deed has been issued is by reason of the fact that Section 2215 as amended specifically provides that the deed conveys the land free of all taxes except subsequent taxes, and for the further reason that the element of estoppel is present, neither of which occur when a redemption is made.

However, this last mentioned proposition was raised in the case of Tilden vs. Chouteau County; also the Montana Supreme Court in an opinion handed down in July, 1929, not yet reported, disposed of the question without deciding it, in the following words:

“Defendants contend that, had the notice of application omitted the 1920 tax and had plaintiff redeemed the land without paying the tax for that year, he would have taken the land burdened with the lien therefor, and therefore contend that it was proper to include the 1920 taxes in the statement of the amount due in the application for a tax deed. Conceding the premise that upon redemption of property from one tax sale the redemptioner takes the property burdened with liens for

prior taxes—but of this there is considerable doubt (compare note in Ann. Cas. 1913A, 675, and State ex rel. City of Great Falls vs. Jeffries, 83 Mont. 111, 270 Pac. 638) still it does not follow that taxes for prior years are properly included in the notice of application for a tax deed based upon a particular sale.”

We have examined many of the cases cited in the above quoted portion of the opinion and in all of them that we examined a tax deed had issued and I do not believe that they constitute authority that a bare sale without the issuance of deed relieves the land of the lien for prior taxes.

Answering your second question, it is my opinion that the county has an enforceable lien for the taxes of 1920 upon the property upon which there have been no subsequent delinquencies. In Cullen vs. Western, etc. Title Co., 47 Mont. 513 it was held that a void tax sale did not prevent a resale the following year for the same taxes. Where a void sale has been made it is the same if no sale had been made, and, therefore, in my opinion, this decision would apply in the cases mentioned by you.

I am therefore of the opinion as to your second question that the county has an enforceable lien for the taxes of 1920.

Very truly yours,

L. A. FOOT,  
Attorney General.