

Taxation—Delinquent Taxes—Tax Sales—Special Improvements—Local Improvements—Tax Titles—Tax Deeds.

Since the enactment of Chapter 100, Laws of 1929, a tax deed does not convey the property free of the lien of special and local improvement assessments payable subsequent to the execution of the tax deed, said assessments by virtue of said chapter remaining a lien upon the property. This applies, however, only to sales made after the passage and approval of said chapter.

Board of County Commissioners,
Winnett, Montana.

August 31, 1929.

Gentlemen:

Mr. Joe Maxey, one of the members of your board, has submitted to me an opinion by Jack Briscoe, attorney at law, given to the city of Winnett, relating to certain tax matters, from which it appears that there is certain real property situated in Winnett which has general delinquent taxes against it as well as delinquent special improvement taxes.

While the opinion referred to does not so state, I infer that this property has heretofore been sold to the county at a tax sale for said delinquent general taxes, city taxes and special improvement assessments and that some of the assessments were not due at the time of the sale and are still unpaid. You inquire, should the county take tax deeds for this property whether the county will thereby acquire said property free from the lien of the special improvement assessments which were not due at the time of the tax sales and therefore were not included in the amount for which the property was bid in by the county at the tax sale. The opinion above referred to holds that such deed would convey the property to the county free of said special assessments.

Of course, those special assessments, if any, which were due at the time of the tax sale and which were included in the amount of delinquent taxes for which the property was sold at the tax sale and bid in by the county would, after the county has acquired the property and re-sold the same, have to be accounted for in the manner provided by Section 2235 R.C.M. 1921, as amended by Chapter 85, Laws of 1927.

As to the remaining special assessments which were not due at the time of the tax sale you are advised that prior to 1929 a tax deed

conveyed the absolute title to the property as of the date of the expiration of three years following the date of sale free of all encumbrances, except the lien for taxes which may have attached subsequent to the sale. (Section 2215 R.C.M. 1921, as amended by Section 2 of Chapter 85, laws of 1927). Special improvement assessments are not taxes within the meaning of the word as used in said section (State ex rel. Great Falls vs. Jeffries, 83 Mont. 111) and therefore a tax deed conveyed to the county the property free of such assessments.

At the 1929 session of the legislature that body apparently intended to and did change the law in this respect for by Section 9 of Chapter 100, laws of that year, it is provided:

“The deed hereafter issued under this or any other law of this State shall convey to the grantee the absolute title to the lands described therein as of the date of the expiration of the period for redemption, free of all encumbrances and clear of any and all claims of said defendants to said action except the lien for taxes which may have attached subsequent to the sale and the lien of any special or local improvement assessments levied against the property payable after the execution of said deed, and except when the land is owned by the United States or this State, in which case it is prima facie evidence of the right of possession accrued as of the date of expiration of such period for redemption.”

It will be observed that said section specifically provides that the tax deed conveys the absolute title to the property as of the date of the expiration of the period for redemption free of all encumbrances except the lien for taxes which may have attached subsequent to the sale and “the lien of any special or local improvement assessments levied against the property, payable after the execution of said deed.” The above quoted part has been inserted in the statute by the amendment thus made and its meaning is so clear that it hardly requires the statement that the amendment abrogates the rule as announced in the Great Falls case above referred to, to the extent that the lien of the special or local improvement assessments which are payable after the execution of the deed is now preserved from extinction by the issuance of tax deed instead of being destroyed by the tax deed prior to the enactment of said Chapter 100 of the Session Laws of 1929.

In this connection it is well to observe that said Section 9 of Chapter 100 applies to a “deed hereafter issued under this or any other law of this state.” Said Chapter 100 by the terms of the original bill was broad enough to permit actions to be brought for tax deeds whether the property was sold at a delinquent tax sale either before or after the enactment of the law but during its course in the legislature the bill was amended so that such actions could only be brought where the property had been sold for delinquent taxes after the passage of the law.

Section 9, therefore, insofar as a deed issued under the provisions of said Chapter 100 is concerned can only have effect in cases where

the delinquent tax sales are held after the passage of that act and would not apply to tax sales held prior thereto. Said Section 9, by its terms, is not confined to deeds issued as a result of an action provided for in said Chapter 100, but also applies to deeds issued after its passage and under any other laws of the state. Apparently, upon its face, it is broad enough to apply to deeds issued upon sales made prior to the enactment of said Chapter 100, but upon which no deed had issued prior to said enactment and upon which deeds would be procured after the passage of said act. However, it is my opinion that the legislature did not so intend and that this condition arises by a failure to amend said Section 9 to conform with the rest of the act after the amendments had been made limiting its provisions relating to actions to acquire tax title to sales made after the passage of the act. However this may be, I do not think it competent for the legislature to enact a law changing the title that is conveyed by the tax deed where such change is to the detriment of the purchaser and is made intermediate to the sale and the issuance of the deed. A purchaser at the tax sale is entitled to receive the title that is provided for by law at the time of the sale, if no redemption is made, and the legislature may not destroy a vested right in this respect.

“The validity and effect of a tax deed duly executed are to be determined by the statutes in force when the sale was made or certificate acquired, and not by any statute enacted after the sale or issuance of the certificate and before making of the deed.” (37 Cyc. 1452 and cases cited.)

“The sale of land for delinquent taxes constitutes a contract between the purchaser and the state, the obligation of which cannot be impaired to the disadvantage of the purchaser by subsequent legislation * * * .” (26 R.C.L. 434.)

If said Section 9 were to apply to sales already made at the time of its passage and upon which no tax deed had theretofore been procured it would pass the title to the purchaser subject to a greater burden than would have been the case under the law in existence at the time of the sale, in this respect, namely, that under Section 9 the property would still be subject to the lien of the special assessment payable after the execution of the deed, whereas, under the prior law existing at the time of the sale the property would pass free from the lien of said special assessments.

This result may not be accomplished by legislation or otherwise as it is contrary to the well recognized rule of the inviolability of contractual and vested rights.

It is therefore my opinion that in those instances where the sales were held prior to the enactment of Chapter 100 of the Laws of 1929 and a deed is procured at this time that it will pass absolute title to the county as of the date of the expiration of three years following the date of sale free from all encumbrances except the lien for taxes which may have attached subsequent to the sale and that such deed would operate to pass the property free of the lien of the special improve-

ment assessments that were not due and payable at the time of the tax sale and which but for the issuance of said deed would remain a lien upon the property. Where, however, property is sold at a tax sale after the enactment of said Chapter 100, Laws of 1929, and a tax deed is procured upon said sale that said deed would not pass the property to the purchaser free of the lien of special or local improvement assessments that are payable after the execution of the deed.

Very truly yours,

L. A. FOOT,
Attorney General.