

Counties—Claims—County Treasurer—Tax Sales Redemption—Redemption—Warrants.

Moneys paid to a County Treasurer for redemption of property from a certificate of sale which has been assigned to an individual are not county funds and the right of the

person entitled to receive them does not constitute a claim against the county. No claim therefor need be filed with the Board of County Commissioners and be approved by the Board as a condition precedent to its payment by the County Treasurer. Such funds are trust funds and need not be paid by warrants but may be paid in specie or by treasurer's check if he has deposited them in a bank in a separate fund.

W. M. Millis, Esq.,
County Clerk and Recorder,
Columbus, Montana.

October 17, 1929.

My dear Mr. Millis:

You have requested an opinion on the question of whether it is necessary for the county clerk and recorder to draw warrants on the delinquent tax redemption fund or if such warrants should be drawn by the county treasurer; also whether a claim must be filed and allowed by the board of county commissioners before such warrants may be drawn.

Section 2202 R.C.M. 1921, reads as follows:

"Redemption must be made in lawful money, and when paid to the county treasurer, he must credit the amount paid to the person named in the county treasurer's certificate, and pay it on demand to the person or his assignees."

It will be observed from said section that the county treasurer must pay the redemption moneys to the person mentioned in the certificate of sale or his assignees on demand. The statute makes the payment mandatory upon the demand by the person mentioned in the statute, and it does not fix as a condition precedent that a claim shall have been allowed by the board of county commissioners.

These moneys that are paid to the county treasurer for redemptions from tax sales are not county moneys but are held in trust by the treasurer for the benefit of the persons entitled thereto. They should not be commingled with the county's funds but should be kept separate and apart therefrom. As they are not county funds they are not required to be paid by warrants but may be paid by the county treasurer delivering the money in specie to the person entitled thereto, or if the county treasurer has deposited them in a bank in a separate fund he may draw his check against said fund and deliver it to the person entitled thereto.

The right of the persons entitled to receive these redemption moneys is in no sense a claim against the county, and it is my opinion that no claim need be filed with the board of county commissioners and be approved by them as a condition precedent to their payment by the county treasurer to the persons entitled to receive them.

Very truly yours,
L. A. FOOT,
Attorney General.