

Taxation — Taxes — Payment — Delinquent Taxes—Tax Sales.

Under chapter 67, laws of 1931, a failure to pay the first half of taxes levied renders only that half delinquent, the second half not becoming delinquent until five o'clock p. m. May 31.

Tax sales may not be held for the delinquent first half of the taxes while the second half is not delinquent. If the second half becomes delinquent also on May 31 the tax sale held in July should be for the first and second half delinquencies.

Mr. H. F. Miller,
County Attorney,
Fort Benton, Montana.

July 7, 1931.

My dear Mr. Miller:

You inquire if since the enactment of chapter 67, laws of 1931, amending section 1 of chapter 96, laws of 1923 as theretofore amended, the county treasurer is required to hold delinquent tax sales for each of the first and second half of the annual taxes in case both are not paid and become delinquent.

I enclose herewith a copy of opinion rendered to A. N. Longfellow, county treasurer of your county, on the 24th day of June, 1931, in which it is held that since the amendment of 1931 aforesaid only the first half of the taxes become delinquent in case they are not paid on or before

November 30th. In other words, whereas, under the law before its amendment a failure to pay the first half on or before November 30th rendered both the first and second halves delinquent, now, by virtue of the amendment, the delinquency of the first half does not render the second half delinquent, delinquency of the second half accruing only on failure to pay that half on or before 5:00 o'clock p. m. on May 31st.

The entire amount of the taxes levied against any particular property subject to tax sale in case of delinquency is secured by a lien upon the property which lien attaches as of the first Monday in March. There is but one lien for these taxes though payment may be made in two installments. Heretofore, the failure to pay the first installment on or before November 30th rendered the whole of the taxes levied for the year delinquent as of 6:00 o'clock p. m. on November 30th and at the tax sale held in January following the property was sold for the whole of the taxes as a step in the enforcement of the lien. When the first half was paid so that the same did not become delinquent the lien of the county was reduced to the extent of the payment but remained intact for the second half of the taxes. If the second half was not paid on or before 6:00 o'clock p. m. May 31st the property was sold in July for the second half of the taxes as a step in the proceedings to enforce the lien. In either event the sale of the land for the taxes was for the full extent of the lien held by the county at the time of the tax sale.

Since the amendment of 1931 above mentioned a failure to pay the first half of the taxes on or before November 30th renders that half delinquent only so that at the time of the January sale the whole of the taxes levied for the year would not be delinquent and therefore if the property was sold at that sale it could only be for the first half of the taxes and the assessments for special improvements in cities and towns which must be paid in full on or before November 30th. It is apparent that if the property was sold for the first half of the taxes the sale would not be to enforce the entire lien of the county as that lien covers both the first and second halves of the taxes. Such a sale would be only a partial enforcement of the lien and if the county would enforce the lien for the second half of the taxes it is apparent that a second sale of the same property would be required to be held in July.

The double sale of property for the enforcement of a single lien would be a new departure in our laws and the county or a private purchaser purchasing at such sales their assignees and the owners would find themselves in a legal status with reference to their rights that is entirely foreign to that recognized by our laws relating to tax sales, redemptions, assignments and tax deeds.

Under the statutes the purchaser at the January tax sale acquires the whole lien of the county for the whole of the taxes levied during the year and if the redemptioner would redeem he must pay the whole amount of the taxes levied for the year and for which the property was sold plus subsequently assessed delinquent taxes, and if he does so redeem his land is clear of the lien for the taxes for that year as well as for the subsequent years included in the redemption. If at the January sale it was now to be held that the property must be sold for only the first half of the taxes the purchaser would not acquire the full lien of

the county but only to the extent of the first half of the taxes and his purchase would be subject to the further right of the county to sell the same property for the second half of the taxes.

A redemptioner redeeming from the January sale would not clear the property of the year's taxes by his redemption but only of the first half. In case the second half also became delinquent and there was no redemption from the first sale then there would be two certificates of sale outstanding against the same property for the same year's taxes, whereas our statutes provide only for one. It is apparent that if two tax sales are held one person may become the purchaser at one of the sales and another person at the other, or the county may be the purchaser at the first sale and a private individual at the second, or the individual at the first and the county at the second, or the county may be the purchaser at both sales. If the county became the purchaser at the first sale and an individual became the purchaser at the second, and no redemption was made the county would be entitled to a tax deed some six months prior to the right of the individual to receive his tax deed. Two tax deeds would have to be issued where the statutes recognize but one. The only tax deed that is recognized by our statutes is one that conveys to the grantee the absolute title to the lands described therein as of the date of the expiration of three years following the date of sale, including all the right, title, interest, estate, lien, claim and demand of the state of Montana and of the county in and to said real estate, 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 the deed. (Section 2215 R.C.M. 1921, as amended by section 2 chapter 85, laws of 1927; also section 9, chapter 100, laws of 1929.)

By virtue of the statutes named the deed to the county issued for the first half of the taxes would convey to it the land, free of the lien for the second half of the taxes inasmuch as that lien attached prior to the sale and it is only those tax liens that attach subsequent to the sale that are preserved from the operation of the tax deed. The purchaser of the land for the second half of the taxes would find that although those taxes were secured by the same lien that secured the first half he could acquire no deed to the land, or if he did acquire one it would be worthless as against the first deed.

Under the existing statutes any purchaser at a tax sale is entitled to a deed if redemption is not made from the sale but the purchaser of the land for the second half of the taxes, if issued a deed, could also contend that inasmuch as his deed conveyed the land free of all taxes, except those the lien of which attached subsequent to the sale, the deed issued to the county for the first half of the taxes was annulled by the issuance of his deed, yet the deeds in both instances were issued for taxes which were secured by the same lien and the law gives no preference to either half of the taxes over the other.

If a private person became the purchaser at the first tax sale and the county became the purchaser at the second then the deed issued on the first sale could, under the statute, be said to convey the land free of the county's lien for the second half of the taxes and thereby the county

would lose one-half of the year's taxes. The law also provides that when the county has become the purchaser of property at a tax sale that it shall not thereafter be sold for taxes during the period of redemption but that if a redemption is made the subsequent taxes must also be paid in order to exercise the right of redemption. Inasmuch as the second half of the taxes are not assessed subsequently to the first sale it is therefore apparent that if the sale was made for the first half of the taxes a redemption could be effected without paying the second half so that a sale for the second half of the taxes would be required in order to enforce the lien therefor. Yet, as above stated, this second sale may result in utter futility due to the effect given the first tax deed by our statutes or the first sale might be equally futile if the force of the statutes be given to the second deed.

What is said above is sufficient to illustrate the fact that if tax sales must be held for both the first and second halves of the taxes the deeds issued therefor must be of different import and legal effect than the tax deed that is authorized to be issued by the statute in order to preserve the legal rights accruing to the purchasers at the respective sales. As these deeds would spring from taxes secured by the same lien it would be necessary to hold that the deeds were of equal rank and therefore that the purchasers would be either tenants in common or joint tenants. Thus it is easy to conceive of the county becoming a part owner of lands with individuals. Our tax sales laws do not create such a situation. This would lead to interminable confusion such as I doubt would ever be authorized in regard to the possession of lands, the rents and profits thereof, and would no doubt seriously diminish the prospect of the county realizing the delinquent taxes by a sale of the property as it would only have to offer an interest in the property rather than the property itself.

In my opinion, our laws only contemplate one sale for the year's taxes and there is no machinery set up in our law authorizing split sales and the issuance of more than one deed. As under the amendments of 1931 the second half of the taxes are not delinquent at the time of holding the January tax sale it is obvious that property cannot be sold for the second half of the taxes at that time. Therefore, at the January tax sale the county would be incapable of vesting in the purchaser its entire lien for the taxes by virtue of the sale. This, in my opinion, would prevent the sale of the lands at the January tax sale for the reason that the county cannot sell at the sale what the law requires to be sold, namely, the entire lien of the county existing at the time of the sale, and the consequent legal right to procure a tax deed conveying the property free of taxes except those, the lien of which attached subsequent to the sale in the case redemption is not made. The legislature apparently intended that the lien of the county for the second half of the taxes should be preserved and not be extinguished by the issuance of a deed for the first half of the taxes which would occur if a private person purchased the land for the first half of the taxes which he is at liberty to do as the county cannot become a competitive bidder.

As stated above, there is no authority to issue a deed having any

other legal effect than that provided by our laws. As the only time that the county would be in a position to vest in the purchaser its entire lien would be after both the first and second halves of the taxes had become delinquent or the first half was paid and the second only delinquent, it appears to me that the only proper time to expose the lands to sale for delinquent taxes would be at the July tax sale when they will be exposed to sale for the full amount of the taxes then delinquent, whether it be both the first and second halves or the second half alone. At such a sale the entire lien of the county will vest in the purchaser and a deed can be issued such as is authorized by the law and the provisions relating to redemptions, assignments, subsequent taxation and sale and rentals of lands acquired by tax deed will be held intact.

This, of course, applies only to tax sales held on assessments and levies made in 1931 and subsequent years.

Very truly yours,

L. A. FOOT,

Attorney General.