

**Counties—Irrigation Districts—Sale—Lands—Tax Deeds  
—Proceeds—Bonds.**

An irrigation district having bonds outstanding, which were issued when the law provided that on a sale of lands acquired by tax deed they could not be sold for less than the total of the taxes and assessments against it, is entitled to receive out of the proceeds, where they are less than the total amount of taxes and assessments, its pro rata share of the proceeds and the general taxes against the land are not entitled to priority in the distribution of the proceeds of the sale.

Mr. James M. Blackford,  
County Attorney,  
Libby, Montana.

January 22, 1932.

My dear Mr. Blackford:

You have requested my opinion with reference to the distribution of proceeds received from the sale of land in an irrigation district acquired by the county through tax proceedings and where there are outstanding bonds issued by the irrigation district.

I have reviewed the Mallott case as well as the statutes and, in my opinion, the moneys received from the sale of these lands where they do not equal the accrued taxes and assessments must be pro rated among the various funds which are represented by accrued taxes and assessments against the land in the proportion that each tax or assessment bears to the total of the taxes and assessments against the land.

You do not state when the bonds were issued but I am assuming that they were issued at the time when the law provided that the property could not be sold for less than the total of the taxes and assessments against it. If such is the case it is plain that the right of the bondholders to receive out of the moneys realized from a sale of the lands that part which is represented by the assessments for and on account of the bondholders was fixed by the law at the time the bonds were issued. The subsequent change in the law permitting the land to be sold at its fair market value was held by the supreme court not to impair the rights of the bondholders under the previous law. However, if it was to be held that the general taxes would first be paid out of the moneys received from the sale of the property representing the fair cash or market value of the land, if the sum realized was less than the total taxes and assess-

ments, the bondholders would, by this change, be prejudicially affected, for, under the prior law before its change they were entitled to receive from the moneys realized on the sale the whole of the assessments made for the bondholders for no sale could be made unless the full amount of the assessments, as well as the general taxes, was realized.

By permitting the land to be sold at a figure less than the full amount of the taxes and assessments the legislature did not and could not intend to substitute for the absolute right to receive these moneys on account of assessments made for the bondholders an inferior right subordinate to the general taxes. If the general taxes were to have the first claim upon the proceeds realized the effect would be that those taxes have acquired a status superior to what they had under the original law for under that law they had no claim whatever to any part of the proceeds that was represented by assessments made for these bondholders.

The general taxes were entitled to that part of the proceeds which represented levies made for them, and the bondholders were entitled to receive that part of the proceeds which was represented by levies made for them. There was no question of priority at all. Under the existing law, in my opinion, there is not presented a question of priority. The bondholders and the entities having general taxes are each entitled to receive out of the proceeds, where said proceeds are less than the total amount of taxes and assessments, their pro rata share of the proceeds and neither has a priority over the other. Were it held otherwise, in my opinion, the constitutional rights of the bondholders would be prejudicially affected while the entities having general taxes against the land would enjoy a greater right than they had under the law at the time the bonds were issued.

The statement in the Mallott case as to the superiority of general taxes was not made with reference to any idea that in the collection of taxes, or the distribution of the proceeds of the sale of lands, the general taxes should have a first claim on the moneys received. The statement was made with reference to the contention that the lien of the bonds themselves would continue after the county had acquired tax title. This is an entirely different question than the distribution of moneys represented by tax levies.

The statement of the court referred to by you on page 95 of volume 89 of the Montana Reports that if the land shall sell for an amount in excess of the taxes and assessments, then after the payment of the general taxes the remainder of the money should be turned over to the irrigation district, provided that sum does not exceed the total amount which would have been assessed against the lands on account of the bonds had such lands not been transferred by tax deed is, in my opinion, not to be construed as authority to first pay the general taxes out of the proceeds where the amount of the proceeds realized is less than the total of the taxes and assessments.

In making the statement the court was discussing the rights of the bondholders as they were affected by the tax deed and the court, applying the rule of equity, held that where the amount received exceeded the taxes and assessments the entities entitled to the general taxes would

receive them and the district entitled to the assessments would receive them and in addition would receive the sum in excess of both of these for the benefit of the bondholders which would be in lieu of the lien of their bonds which had been destroyed by the tax deed.

There is not involved in the statement of the court the question of priority as between the taxes and assessments for where the land is sold for a sum in excess of both of these then the entities entitled to the taxes receive those taxes and the district being entitled to the assessments receives the assessment as well as the excess of the proceeds for the benefit of the bondholders in lieu of their lien which was destroyed by the tax deed.

Very truly yours,

L. A. FOOT,  
Attorney General.