

Taxation—Certificates of Sale—Assignments—Penalties—Interest.

A county treasurer should collect interest at the rate of two-thirds of 1% per month when assigning tax sale certificates where the taxes for which the property is sold were levied in 1931 or subsequent years. Where, however, the assignment is of certificates on taxes levied previous to 1931 interest should be collected at the rate of 1% per month.

Mr. Walter R. Knaack,
County Attorney,
Shelby, Montana.

June 15, 1932.

My dear Mr. Knaack:

You have requested an opinion whether a purchaser of tax sale certificates from the county must pay to the county the amount for which the property was sold plus interest at the rate of 1% per month as provided in section 2207, R.C.M. 1921, or at the rate of two-thirds of 1% per month as provided by chapter 67, laws of 1931.

The last mentioned chapter specifically provides that it is not retro-

active and that it shall apply only to tax levies made on assessments levied from and after the first Monday in March, 1931. It further provides:

“In computing all penalties and delinquencies on the sale of property for the non-payment of taxes, or the acquisition of tax titles, any levies heretofore made shall be computed on the basis of the then existing laws, but levies made on assessments for 1931 and thereafter shall be computed on the basis provided in this Act for their respective portions, and all Acts and parts of Acts in conflict herewith are amended in accordance with the provisions of this Act.”

While the above quoted part of the law is rather awkwardly worded, it is my opinion that what was intended is that in any case where it is necessary to add penalties or interest either in connection with the sale of property for the non-payment of taxes or the acquisition of tax titles the penalties and interest mentioned in the chapter shall be used if the taxes against which they are to be added or computed upon were levied in the year 1931 or thereafter but that where the delinquent taxes arise from levies made prior to 1931, then the chapter does not apply but the penalties and interest provided by the law at the time the levies were made shall apply.

The chapter, therefore, has nothing to do with penalties and interest in connection with taxes levied prior to 1931 and as to those cases when the county sells a tax sale certificate the county treasurer should follow the provisions of section 2207 and collect interest at the rate of 1% per month.

As to assignments of tax sale certificates covering taxes delinquent for the year 1931 and subsequent years, it is my opinion that the county treasurer should collect interest at the rate of two-thirds of 1% per month. The act specifically states that as to the taxes for 1931, and thereafter, its provisions shall apply in “the acquisition of tax titles.” The county, if it continued to hold the tax sale certificate, could only collect interest at the rate provided for in the act in case of a redemption after giving notice of intention to apply for tax deed and the county cannot assign any greater right than it possesses.

A purchaser of the tax sale certificate from the county in giving notice for tax deed likewise could only require the payment of interest at the rate of two-thirds of 1% per month as the giving of such notice and of the amount necessary to be paid in order to effect redemption is a step in the acquisition of tax titles. It has never been the policy of the state to require a purchaser of these tax sale certificates from the county to pay a premium for them, yet if the purchaser was required to pay interest at the rate of 12% and could only collect at the rate of 8% in case of redemption, that is what it would amount to.

It is my opinion that the purpose of section 2207 in providing that the purchaser of the tax sale certificate should pay the amount for which the property was sold, with interest at the rate of 1% per month, was to secure to the county the amount for which the property was sold and the same rate of interest as if a redemption had been made from the

sale and that inasmuch as said chapter 67 of the laws of 1931 changes the rate of interest which the county could receive in case of redemption that the legislature by the enactment of said chapter impliedly amended said section 2207 so that as to assignments of tax sale certificates where the property was sold for the 1931 taxes, or subsequent years, the county treasurer should only collect from the purchaser of said certificates interest at the rate of two-thirds of 1% per month.

As to special assessments made for special improvements in towns and cities sub-section b of section 1 of chapter 67, laws of 1931, provides that they shall be payable on or before 5:00 o'clock P. M. on the 30th day of November of each year, and in the event the same are not paid on or before that date the same shall be subject to the same interest and penalty for nonpayment as are or may hereafter be provided by the laws of the state of Montana for other delinquent taxes. My construction of this provision is that these special assessments may not be paid in semi-annual installments but must be paid on or before the 30th day of November of each year but in case they are not so paid they bear the same rate of interest and penalties as do the delinquent taxes mentioned in the first paragraph of section 1, namely, two-thirds of 1% per month and a penalty of 5%.

This provision concerning special assessments, like the provision concerning the taxes, is limited by section 3 so that in tax sale certificates wherein the amount for which the property was sold included these special assessments the interest would be computed at the rate of 12% per annum where the assessments were for the year 1930, or prior years, but if they are for 1931 or subsequent years then the interest should be computed at the rate of two-thirds of 1% per month.

Very truly yours,

L. A. FOOT,
Attorney General.