

**Taxation — Assessment — Owner — Personal Property —  
Liens.**

The owner of a sheriff's certificate of sale on the first Monday in March, 1931, is the owner of the land at that time for assessment purposes. Personal property taxes are only a lien upon the real estate of the owner of the personal property.

Where land is wrongfully assessed to a person who is also assessed for personal property taxes the lien of the personal property taxes does not affix to the land.

Mr. Horace W. Judson,  
County Attorney,  
Cut Bank, Montana.

June 6, 1931.

My dear Mr. Judson:

You request an opinion as to whom land should be assessed in the

case where prior to March 1, 1931, the land was sold under foreclosure proceedings and the mortgagor was not on the first Monday in March, 1931, in the possession of said lands. You state that the land has been assessed to the mortgagor, together with personal property which he owns, and you also inquire if the taxes assessed against the personal property are a lien against the said land.

Section 2002, R.C.M. 1921, provides that property shall be assessed to the persons by whom it was owned or claimed or in whose possession or control it was at 12:00 o'clock noon on the first Monday of March.

In the case of *State ex rel. Hopkins vs. Stephens*, 63 Mont. 318, 206 Pac. 1094 the supreme court of Montana held that after foreclosure sale and before redemption therefrom the judgment debtor or mortgagor has neither the legal nor the equitable title to the property sold. Under this decision the purchaser at the foreclosure sale has both the legal and the equitable title to the land purchased and is therefore the owner of it, subject only to the bare personal privilege of the judgment debtor to redeem within the statutory period. In the case mentioned by you the judgment debtor, not being in possession of the land on the first Monday in March, and having neither the legal nor equitable title to the land, it should be assessed to the purchaser at the foreclosure sale as the owner thereof.

Section 2153, R.C.M. 1921, as amended by section 1 of chapter 113, laws of 1927, provides that every tax due upon personal property is a lien upon the real property of the owner thereof, except in certain instances mentioned in said section, which exceptions are not applicable here. The personal property in this case did not belong to the owner of the land on the first Monday in March and therefore the taxes levied against said personal property do not come within the terms of said section so as to make said taxes a lien upon the land in question.

Under said section it is only the land that is owned by the person owning the personal property assessed that is subject to the lien for the personal property taxes. In your case the land was owned by the purchaser at the foreclosure sale and the personal property was owned by the judgment debtor so that the taxes on the personal property could not be a lien upon the land owned by the purchaser at the foreclosure sale.

I suggest that the county assessor change his assessment of the land so that it will be assessed against the purchaser at the foreclosure sale and assess the personal property to the judgment debtor, who is the owner thereof, and if this is done the record will not disclose any liability of the land for the personal property taxes.

Very truly yours,

L. A. FOOT,  
Attorney General.