

Taxation—Assessment—Levy—Omitted Property.

The holder of a sheriff's certificate of sale of land on the 25th day of January, 1929, and who is the owner of the land on the first Monday in March, 1931, is subject to have the land assessed in 1931 as omitted property for the year 1929 where the land was not assessed in that year because the county supposedly had title thereto, which title later proved defective. The rate of levy would be that of the year 1929.

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

June 19, 1931.

My dear Mr. Knaack:

I have your request for an opinion. It appears that the county obtained a tax deed to a certain piece of land on January 31, 1929, which was thereafter set aside by your district court on March 5, 1931. The land was not assessed in 1929 because the county then had a tax deed and supposed title thereto. The question now arises as to the assessment of the land for 1929 as omitted property which should have been assessed that year.

It appears that on October 18, 1924, the land was sold at a mortgage foreclosure sale and a sheriff's certificate issued to one Wheeler as trustee, who assigned the sheriff's certificate on the 25th day of January, 1929, to T. G. McDermott and sheriff's deed was issued to McDermott in April, 1930.

I enclose herewith an opinion rendered to Horace W. Judson, county attorney, under date of June 6, 1931, in which it is held that the purchaser of land at a foreclosure sale is assessable with the same during the period of redemption. Inasmuch as McDermott, by taking the assignment of the sheriff's certificate of sale, acquired all the rights of the purchaser at the sale and inasmuch as he had acquired all these rights and was the owner of them and of the land on the first Monday in March, 1929, it is my opinion that on the first Monday in March, 1929, the land was assessable to McDermott, and inasmuch as McDermott is still the owner of the land it is in the ownership and under the control of the same person who owned and controlled it at the time it should have been assessed in 1929, as is required by section 2034, R.C.M. 1921, for the assessment of omitted property.

You also inquire whether the property, if assessed this year as omitted property, should take the 1929 or 1931 levy. In my opinion it should take the 1929 levy.

Very truly yours,

L. A. FOOT,
Attorney General.