

Opinion No. 143**Counties—Real Property—Taxation of
Property of One County by Another.**

HELD: If a county is, in effect, a mortgagee of property in B county, the property is subject to taxation in B county, but if A county is the equitable owner of property in B county, whether or not title is acquired according to law or by an ultra vires act, it is not subject to taxation there.

April 8, 1933.

We have your inquiry concerning the

status of certain land in Hill County for purposes of taxation, the same being held in the name of Niels Madsen, trustee for Sheridan County.

It is not possible to determine from your statement of the case or that of Mr. Ahern or from both together whether Sheridan County is, in effect, a mortgagee of the property or the equitable owner thereof. If it be the former, the property is subject to taxation. (61 C. J. 56C, 367; 2 Cooley on Taxation, Sec. 625.) If it be the latter, the property is not subject to taxation (Sec. 2, Article XII, of the Constitution; Buffalo Rapids Irr. Dist. v. Collieran, 85 Mont. 466; People v. City of Toulon, 133 N. E. 707; 2 Cooley on Taxation, Secs. 625 and 629; 61 C. J. 417-420) and cannot be validly sold for taxes. (61 C. J. 1132, 1133.)

We agree readily enough with Mr. Ahern that under Section 4444, Revised Codes 1921, a county is without power to purchase and hold lands outside its own limits, but we do not think the principle has any application here.

Assuming that Sheridan County is the owner of the land in question, it matters not at all whether it acquired title thereto according to the law or by an ultra vires act so far as the result is concerned. In either case the mandate of the Constitution is controlling. (Warren County v. Nall, 29 South 755; Benedict v. Bd. of Com'rs. of Lincoln County; 17 Pac. (2d) 454; Mills v. Forest Preserve Dist., 178 N. E. 126; Bloss v. Board of Supr's., 136 N. W. 589; Raley v. Umatilla County, 13 Pac. 890; Walden v. Town of Whigham, 48 S. E. 159; 2 Cooley on Taxation, Sec. 635; 15 C. J. 532, 533.)

As you and the county attorney of Hill County are apparently not in accord either as to the law or the facts, we suggest the institution of an action to quiet title on the part of Sheridan County as the simplest and best way to end the controversy.