

**Opinion No. 161****Tax Assessments — Cancellation of —  
Merger of Title—Taxes, Individual Li-  
ability for—County Commissioners.**

HELD: Where a county at tax sale has purchased equity of purchaser of land sold on contract, and has cancelled contract on account of default of purchaser, interest and lien of county acquired by tax sale certificate is merged with greater title and no further tax deed is required.

There is no personal liability for taxes except as provided in Sections 2253 and 2254, R. C. M. 1921.

County commissioners may authorize cancellation of tax assessments when neither land nor individual is liable for payment.

April 14, 1933.

You have submitted the following facts and question:

"The county here has taken considerable land under tax deeds, and has also sold this land on contract. The land sold by the county has been reassessed to the purchaser. In the assessment of this land both the state and the county have an interest in the proportionate share of the taxes assessed, and I can find no provision in the law providing for any manner in which this assessment can be removed from the books of the treasurer, the result of which is that the books of the treasurer become more and more muddled with these old assessments, which they will never be able to collect or clear unless some authority is given to cancel them.

"The county commissioners desire information as to whether or not there is any authority or any way, by which these old uncollectable assessments can be cancelled on the books of the treasurer."

We assume that the equity of the purchaser has been sold at tax sale and bid in by the county under Section 2191 R. C. M. 1921, as amended by Chapter 31, Laws of 1929.

Section 2191 R. C. M. 1921 as amended by Chapter 31, Laws of 1929, provides for the sale of property to the county when the taxes thereon are unpaid. When the contract for the sale of this property is cancelled on account of the default of the purchaser, the county then finds itself owning the property on which it also holds a tax sale certificate. The purchaser has lost his equity by virtue of the cancellation of the contract. There is no outstanding equity or title in anyone and the county is the owner of the whole interest. Nothing can be accomplished by the county obtaining another tax deed to property which it already owns. Such a procedure would be futile.

It is the general rule that a lesser estate is merged in the greater. This principle is stated in 21 C. J. 1033, Section 233, as follows: "Whenever a greater and a less estate coincide and meet in one and the same person, without any intermediate estate, the less

is immediately annihilated; or in the law phrase it is said to be merged, that is, sunk or drowned in the greater."

It would seem therefore, so far as the land is concerned, that there would be no further need of having the records of the county show the old assessments on the land, or the tax sale certificate, and that a cancellation and a removal from the records of the same would be desirable, unless there is a personal liability on the part of the purchaser.

In 61 C. J. 1041, Section 1353, it is said: "In the absence of any statutory provisions to the contrary it is generally held that no personal liability exists for taxes assessed on realty,  
\* \* \*"

Chapter 173, Part III Revised Codes of 1921, as amended by Chapter 96, Laws of 1923, provides for the collection of delinquent taxes by the sale of the real property against which the delinquent taxes are a lien. This remedy is exclusive, with one exception. This exception is provided for in Sections 2253 and 2254, being Chapter 175, Part III R. C. M. 1921. This chapter gives the state auditor authority to direct the county treasurer not to proceed in the collection of any tax embraced in the delinquent tax list when the same amounts to \$300 or more. Our Supreme Court, has fully considered this question in *State v. Nicholson*, 74 Mont. 346, pages 352, 353.

Since the county, through its treasurer, has pursued the remedy of collecting the delinquent taxes through a sale of the land, that remedy, according to the above decision of our Supreme Court, is exclusive and it cannot collect from the individual. The tax assessments therefore have become *functus officio*. There remains no reason why they should not be cancelled. Nothing of value would be lost or destroyed thereby.

In view of the powers granted to the board of county commissioners, particularly those set forth in subdivision 22 and 25, Chapter 38, Laws of 1929, I am of the opinion that the county commissioners have the power to authorize the cancellation of the old tax assessments and to authorize the proper records to be made, unless the county treasurer has proceeded to collect

the tax as provided in Sections 2253 and 2254, supra. It is suggested that the same procedure might be followed as in the case when delinquent taxes are cancelled when tax deed is taken by the county by reducing the taxes receivable accounts on the county clerk's records and increasing the land acquired by tax deed account (or cancellation of contract) in the amount of these delinquent taxes, or such other uniform procedure which might be suggested by the State Examiner.