

Opinion No. 201

Taxation—Delinquent Taxes—Interest —Constitutional Law.

HELD: (1) Any tax delinquent prior to March 2, 1931, must draw interest up to that date at the rate of 12% per annum until March 16, 1933, and to the extent that Ch. 176, Laws of 1933, attempts to change the rate chargeable before that date to that extent the statute is unconstitutional.

(2) As to all taxes which are levied and become delinquent after March 2, 1931, such taxes must be figured at the rate of two-thirds of 1% per month and apparently the same is true as to all interest on delinquent taxes which may accrue after March 16, 1933.

May 9, 1933.

You inquired as to the constitutionality of Chapter 176, Laws of 1933, and in particular Section 5 thereof. This law is an amendment of Chapter 100, Laws of 1929, relating to the procedure by action in procuring of tax deeds. Section 5 provides in part as follows: "Any defendant to said action may make redemption of said lands from said tax sale by paying the total amount of delinquent taxes and penalties with interest thereon at eight per cent per annum from date of payment, which plaintiff shall have paid together with costs of the action"

Your question must also include the question as to the rate of interest to be charged on delinquent taxes. Prior to March 7, 1923, all taxes which became delinquent required a penalty of ten per cent. Chapter 96, Laws of 1923, amended this penalty changing same to five per cent and repealed Sections 2175 and 2188, Revised Codes, fixing the penalty for delinquent taxes. Up to March 2, 1931, delinquent taxes drew interest at the rate of twelve per cent per annum. By Chapter 67, Laws of 1931, the interest was changed so that delinquent taxes drew interest at the rate of two-thirds of one per cent per month. This law specifically provided

that its provisions were not retroactive and applied only to levies from and after the first Monday of March, 1931. It is clear that all taxes which become delinquent after March 2, 1931, draw interest at the rate of eight per cent per annum. This is true whether Chapter 176, Laws of 1933, is or is not unconstitutional.

The difficult question is as to taxes which become delinquent prior to March 2, 1931. Certainly under the decisions in *Sanderson v. Bateman*, 78 Mont. 235, and *State ex rel. Kain v. Fischl*, 94 Mont. 92, any attempt to reduce the rate of delinquent taxes where interest has already accrued prior to the passage of the act is unconstitutional under these two decisions. Therefore, any tax delinquent prior to March 2, 1931, must draw interest up to that date at the rate of twelve per cent per annum and to the extent that Chapter 176, Laws of 1933, attempts to change the rate chargeable before that date to that extent the statute is unconstitutional.

Chapter 67, Laws of 1931, specifically provides: "Section 2. It is specifically provided that the provisions of this Act are not retroactive and shall apply only to tax levies made on assessments levied from and after the first Monday in March, 1931."

"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."

Therefore Chapter 67 does not change the rate of interest as to taxes which become delinquent on a levy prior to the first Monday of March, 1931. All of such taxes must carry interest at twelve per cent per annum until March 16, 1933. On that date Chapter 176, Laws of 1933, became effective. This law is primarily a law in relation to procedure. It does, however, show a clear intent on the part of the legislature that where the same is not prohibited by the constitution all delin-

quent taxes shall draw interest at the rate of eight per cent per annum.

It is to be noted that sections 2210 and 2221, Revised Codes of 1921, which fix the delinquent tax interest rate at twelve per cent per annum, have never been expressly repealed. As to all taxes which are levied and become delinquent after March 2, 1931, such taxes must be figured at the rate of two-thirds of one per cent per month and apparently the same is true as to all interest on delinquent taxes which may accrue after March 16, 1933. To this extent the former conflicting acts are repealed by implication. The defect in Section 5 of Chapter 176, Laws of 1933, which is herein mentioned, would not constitute a cause for declaring the whole of such Chapter unconstitutional as the remainder of the act would serve its whole purpose although the method of computing interest necessary to redeem cannot apply in all instances. (*Flynn v. Beaverhead County*, 54 Mont. 309.)

The intricacies of this opinion are caused by the intricacies and inconsistencies of the laws which I have attempted to reconcile and so far as possible carry out the express intent of the legislature of this state.

Note: Sec. 2221, *supra*, was repealed by Chap. 163, Laws of 1935.