

First, may the county redeem, and, second, if so, from what fund shall the money be taken, and, third, may the county treasurer be instructed to not assign tax sale certificates issued on lands taken by the county on tax deeds and sold on contract as provided by Chapter 162, Laws of 1929.

Section 2201 R. C. M. 1921 provided that redemption of property sold for delinquent taxes may be made by the owner or any party interested. The recent amendment thereto (Chapter 125, Laws of 1933) reads the same except that instead of the words "any party interested", the words "or having an interest in or lien upon such property", are used. Under this statute as amended there can be no question about the right of the county to redeem for the county has an interest in this property.

In regard to the fund or funds that may be used for the payment, there does not seem to be any statute bearing upon the point. Chapter 131, Laws of 1927, covers the case where a sale of land for delinquent taxes thereon is declared void by a judgment of court for irregularity in the assessment, levy, or sale. In such cases the money paid is by statute commanded to be refunded and so much thereof as has been paid to the state, city, town or district by the treasurer of the county shall be charged to the state, city, town or district by such treasurer and deducted from the next money due the state, city, town or district, respectively, on account of the taxes paid or collected. On the facts stated above, there is no irregularity in the assessment, levy or sale of land and consequently the sale cannot be declared void by a judgment of the court, or otherwise. Money paid into the State Treasury cannot be returned without an appropriation by the legislature. Furthermore, the money paid to the different funds have most likely been spent or budgets fixed in reliance thereon. There does not appear to be any statute authorizing the taking of such money from the special funds, or the withholding of it from other moneys which may be collected.

In the absence of such statutory authority, it is my opinion that such money cannot be taken from the special funds nor can the amount be deducted from other moneys to be collected to which the special funds and

Opinion No. 463.

Taxation—Counties—County Commissioners—County Treasurer—Tax Sales Certificates.

HELD: 1. County may redeem lands sold under contract from tax sale certificate assigned by county treasurer to a third person.

2. Such redemption money must be paid out of the general fund and cannot be taken from or withheld later from the various special funds, in absence of statutory authority.

3. County commissioners may instruct treasurer to not assign tax sale certificates on lands sold under contract, when the purchasers are delinquent in payment of installment or taxes.

January 26, 1934.

On December 20, 1933, Yellowstone County sold Section 19, Township 3 North, Range 24 East M. M., to Frank R. Spicer, who, after making two payments, defaulted on his contract. The county, on November 9, 1932, cancelled the contract. After the sale and before the cancellation, Spicer defaulted in the payment of the taxes on this land and the tax certificates of sale for 1929 and 1930 totaling about \$200.00 were assigned to Mr. Penninger. The land is four or five times the amount of the delinquent taxes and the county desires to redeem from the holder of the tax certificate. Upon these facts you have submitted three questions:

the state are entitled. The authority given by the legislature in the instance named is by implication denied in other cases. It is my opinion, therefore, that such redemption money will have to be paid out of the general fund.

In answering your third question, I am not unmindful of Section 2207 which provides: "At any time after any parcel of land has been bid in by the county as the purchaser thereof for taxes, as provided in section 2191, the same not having been redeemed, the county treasurer shall assign all the right of the county therein, acquired at such sale, to any person who shall pay the amount for which the same was bid in, * * *."

Under this statute the county treasurer has no discretion to refuse to assign the rights of the county in lands in which the county is not interested, except in the collection of the tax thereon. Where, however, the county has an interest in the land aside from the tax due, the county commissioners have a duty under the powers granted in Section 4465 R. C. M. 1921 as amended by Chapter 100, Laws of 1931, to protect the property of the county. Upon default of the purchaser in payment of either the taxes or the purchase price installments, the county commissioners undoubtedly have the right to cancel the contract, when the county holds the tax sale certificates. (See Opinion No. 161, this volume.)

Since it may be necessary to protect the interest of the county in the land, it would seem that an order to the county treasurer to withhold assignment until actual cancellation is made is but a step in the same direction and within the powers as well as the duties of the board of county commissioners. I find no decision by our Supreme court to the contrary and until such decision is rendered, if ever, and until a person who desires to purchase such tax sale certificates, can show a clear legal right thereto, it is my opinion that the board of county commissioners in the interest of the county, has the right to and should instruct the county treasurer to withhold assignments of tax sale certificates on property covered by delinquent contracts.