

Opinion No. 50**Delinquent Taxes—Single Assessments
—Segregation—County Treasurers.**

HELD: The County Treasurer has no right to segregate property covered by a single assessment and sale unless authorized to do so by statute.

January 28, 1933.

You have requested the opinion of this office on the following question:

"Has the county treasurer the right to segregate property from an assessment that is delinquent in order that one who has no lien or other legal claim on the land might redeem a portion of the land from the tax sale and take an assignment of a portion of the certificate? Example: John Doe owns two sections of land and lets his tax become delinquent, then after the time the county has purchased the taxes at the sale as required by law, Richard Roe (a stranger) comes in and asks that the taxes for one of these sections be segregated from the assessment and assigned to him in order that he may have a right to apply for tax deed. Has the county treasurer a right to segregate or split in this case?"

In my opinion no segregation of property covered by a single assessment and sale can be made by the county treasurer in any case where he is not authorized to do so by statute. In the case of an encumbrancer or lienor or person having any interest in property, redemption of a portion of the property is permitted whether the property shall have been assessed or sold with other property or in case the tax assessed against any other property shall be a lien thereon: in such case it is made the duty of the county treasurer to compute and apportion the tax that should have properly been assessed against the real estate sought to be redeemed the same as if separately assessed. Just how the treasurer, from his records, can do this, particularly where two pieces of property the value of one of which is greatly disproportionate to the value of the other, are sold together, is not clear. However, the statute sanctions such procedure and it is the duty of the officer to fol-

low it as best he can. See Section 2211 R. C. M. 1921 as amended by section 1 of Chapter 48, Laws of 1923.

Section 2023, R. C. M. 1921, provides that "land must be assessed in parcels or subdivisions of not to exceed 640 acres. The assessor must set aside one line in the assessment-book for the description of each six hundred and forty acres of land, or less, the number of acres to be entered in one column, the description in another column, value in another column, value of improvements in another column, and the total in the total column. * * * It is the intention hereby that each parcel and lot show in its own line, and opposite the description thereof, the separate value of the same and the value of the improvements thereon."

If this section had been followed, the separate valuation of each parcel or subdivision could be ascertained and a division made. The lien of the tax upon real estate and the improvements thereon is not a lien upon other property of the owner. In the absence of a statutory provision prohibiting it, a taxpayer can pay the tax upon one piece or parcel of land and allow the tax on another to go delinquent. 37 Cyc. 1164. Where two pieces of land, required to be separately assessed, are assessed and sold together, the owner is compelled to pay the whole tax, depriving him of his right to pay on a portion of his property, and in effect making the tax on one piece or parcel of land a lien against another.

Section 2207 provides for assignment of rights of county in property acquired at tax sale and provides the form of the certificate. There is no provision of law authorizing a certificate of tax sale to be split and part of the interest assigned to one person and the other retained or assigned to another person.

For the reason that the legislature has not authorized a segregation in such cases, it is my opinion that a segregation may not be made by the county treasurer under the facts stated.