

Opinion No. 556**Taxation—Delinquent Taxes—State
Lands —Abatement of Taxes on
State Lands—Cancellation of
Taxes on State Lands.**

HELD: Section 94 of Chapter 60, Laws of 1927, which cancels taxes due or delinquent on all lands which revert to the State for failure of the purchaser from the State to meet installments, is constitutional.

June 21, 1934.

Your request for opinion is as follows:

“The Department of State Lands and Investments of the State of Montana at Helena mailed a notice to the County Assessor and the County Treasurer of Pondera County, notifying said parties that on June 21, 1933, the State Board of Land Commissioners cancelled Certificate of Purchase of State Lands No. C-44, standing in the name of the First National Bank of Valier, and embracing the following lands: E $\frac{1}{2}$ NE $\frac{1}{4}$ Sec. 20, NW $\frac{1}{4}$ NW $\frac{1}{4}$

NE¼ Sec. 21, Twp. 28 N., Rge. 6 W., containing 280 acres, said notice stating that as this land has now reverted to the State, you will please cancel any assessment against the land for the present year and all unpaid taxes against the land for this and all prior years, as provided in Section 94 of Chapter 60 of the Laws of 1927, which section reads as follows:

“In case any lands sold under the provisions of this act shall revert to the State, for any cause whatsoever, the commissioner of state lands shall notify the assessor and the county treasurer of the county in which the land is situated, and upon the receipt of such notice it shall be the duty of the assessor to cancel any assessment of said land for that year, and of the county treasurer to cancel all taxes remaining unpaid against the land for that and all previous years.’

“At the time they mailed the above notice, they also sent perhaps fifteen other notices for abatement of taxes. This raises the question of the authority of the State Land Board to abate taxes. I understand that the title, of course, remained in the State Land Board until the contract of purchase was consummated and upon failure of the purchaser to complete it the Land Board had the right to cancel the contract. However, during the period of the contract the Land Board received certain sums of money as consideration for making said contract and for the continuance of same. The county could only tax the equity of the purchaser therein but upon the cancellation of the contract the county would have no lien for their taxes and would be absolutely without any means of collecting same.

“Therefore, it seems to me as though the act must be unconstitutional, as it deprives the county of the right of security for the taxes due. The procedure of cancelling the taxes is especially bad in the outlying school districts where the bulk of the land is State Land and the taxes are computed on the purchaser’s equities, which if cancelled, would mean that where the school districts are in debt that the parties owning the property in the school district would then have to pay the entire amount of the indebtedness. It has also happened in

this county that parties have had their contract forfeited and then repurchased from the Land Board after having had their taxes abated, and thus saved considerable sums of money.

“I would appreciate it very much if you would advise me if, in the opinion of your office, this section is constitutional, as in my opinion it can’t be constitutional where the Land Board can remove the security of the county for the taxes due. In this particular case the removal of the security means the cancellation of the entire amount due from the individual taxpayer.”

Chapter 60, Laws of 1927, is a code which created the Department of State Lands and Investments. It contains 123 sections, including section 94 quoted above. Section 92 thereof provides: “The interest of the purchaser in state lands shall be subject to taxation to the full extent of such interest. The assessor shall assess the purchaser for such percentage of the full and true value of the land as the initial payment on the land and all installments of principal due on the certificate of purchase prior to the first Monday of March of the year for which the land is assessed is of the full purchase price of the land.” Section 93 thereof provides that in case of a sale of such interest for taxes the purchaser at the sale shall succeed to all the rights of the purchaser from the state.

It may be safely assumed, we take it, that no interest in the lands in question was sold for taxes but that they reverted to the state for failure on the part of the purchaser to pay installments of the purchase price as they fell due. In other words, the purchaser forfeited whatever rights it had in or to the lands and the state became the absolute owner thereof once more.

Section 2, Article XII, of the Constitution provides that “the property of the United States, the state, counties, cities, towns, school districts, municipal corporations and public libraries shall be exempt from taxation.” Section 1998, Revised Codes, 1921, is to the same effect.

There cannot be any doubt that by reason of this constitutional provision the lands were freed and absolved from further liability for taxes pre-

viously assessed against the interest therein of the purchaser the moment the state again became the absolute owner thereof. Section 94 but carries out the intent of the framers of the Constitution in that regard. (State v. Galyon, 7 Pac. (2d) 484; State v. Locke, 219 Pac. 790; State v. Reed, 272 Pac. 1008; State v. Frost, 64 Pac. 902. See also, State v. Lewis and Clark County, 84 Mont. 200, and State v. Lewis and Clark County, 84 Mont. 204.)

Section 4, Article 7, of the Constitution of Idaho is like our Section 2. In the case of State v. Minidoka County, 298 Pac. 366, the Supreme Court of Idaho said: "When the state obtains complete unconditional title to lands pursuant to the foreclosure of school fund mortgages, the title is freed, by article 7, § 4 of the Constitution, from all past taxes and liens therefor, and all such liens on the tax records become nil and should be canceled."

The State Board of Land Commissioners has not assumed the power to abate taxes on state lands. The Commissioner of State Lands merely obeys the command of section 94 and the assessor and county treasurer do the rest.

We know of no constitutional provision with which section 94 conflicts. We know that section 2, Article XII of the Constitution, justifies it. That the statute may at times seem to work a hardship on owners of private property or may be subject to abuse is no argument against its validity.