

on is whether a county may accept from a taxpayer a deed to real estate in payment of the taxes which are a lien thereon. I am unable to agree with your opinion that this may be done for the following reasons:

1. Our statutes and constitution do not authorize it. The methods of collecting taxes are fixed by statute. These methods are exclusive. In *State v. Nicholson*, 74 Mont. 346, 240 Pac. 837, it was said: "It is the general rule that, when the statute which creates the tax provides a special remedy for its collection, that remedy is exclusive." (Citing cases.) See also 61 C. J., p. 1043, Sec. 1358, and p. 1010, Sec. 1290.

2. Neither our constitution nor statutes authorize the county treasurer, or the county commissioners, to receive payment of taxes by accepting a deed to real estate. County officers, of course, have only such powers as are granted to them by statute or the constitution. The county treasurer is not permitted to accept anything except money in payment of taxes. See our opinion to Assistant State Examiner Hawkins, June 24, 1933, and to County Attorney Brower, May 25, 1933, Vol. 15, Report and Official Opinions of the Attorney General, Nos. 252 and 221.

3. Article V, Section 39 of the state constitution provides that: "No obligation or liability of any person \* \* \* held or owned by the State or any municipal corporation \* \* \* shall ever be exchanged \* \* \* nor shall such liability or obligation be extinguished except by the payment thereof into the proper treasury." In accepting the land the county would in effect exchange the obligation or liability of the taxpayer due to it for the real estate in violation of the constitutional provision. That taxes are an obligation or a liability within the meaning of this constitutional provision has been repeatedly held by our Supreme Court. See *State ex rel. DuFresne v. Leslie et al*, 100 Mont. 449; *Kain v. Fischl*, 94 Mont. 92, 20 Pac. (2d) 1067; *Sanderson v. Bateman*, 78 Mont. 235, 253 Pac. 1100; *County Commissioners v. Story*, 26 Mont. 517, 69 Pac. 56.

4. Since the county is not authorized to purchase real estate, excepting

**Opinion No. 205.**

**Taxation—Delinquent Taxes, Payment of—Deed May Not Be Accepted in Payment—Counties.**

HELD: A county may not accept from the taxpayer a deed to real estate in payment of taxes which are a lien thereon.

December 4, 1935.

Mr. Fred C. Gabriel  
County Attorney  
Malta, Montana

You have submitted for my approval a copy of your opinion to your county treasurer, dated November 29, 1935. No facts are presented. The general question we are asked to pass

for purposes permitted by statute, a question as to its good title might be raised.

5. By taking deed from a taxpayer in payment of taxes the county would take title subject to all encumbrances, if any, against it instead of taking a title free and clear of all encumbrances, as in case of tax deed. Section 2215, R. C. M. 1921, as amended by Chapter 85, Laws of 1927.

6. Section 2209, R. C. M. 1921, as amended by Chapter 92, Laws of 1927 and Chapter 156, Laws of 1929, provides that the owner of property sold for taxes shall have 30 days notice of application for tax deed. A question may be raised as to whether such notice may be waived.

While from a practical view point, it might seem that in some cases at least the same result can be obtained by taking a deed from the owner as would be accomplished by taking a tax deed, in view of the absence of statute authorizing it, and questions of doubt which might be raised against the title, we feel that it is not safe to do so, and that such practice should not be encouraged.