

ter 65, Laws of 1933, which provides a method of distribution of the proceeds of sale of property acquired by a county by tax deed, which is different from that provided by Chapter 33, Laws of 1933-34, Extraordinary Session, which, in Section 3, also provided: "Nothing herein contained shall be construed as an amendment or modification of Chapter 65, Laws of 1933." You inquire which of these chapters should prevail.

The said Chapter 65 (Section 2208.2 R. C.) provides: "All moneys received from the sale or leasing of any such lands, or of any lands received in exchange, shall be paid into the county treasury and shall be credited to each fund as the same would have been credited had the money so received been paid as taxes upon said land acquired by the county by tax deed, or upon the lands exchanged, and any surplus after paying all taxes with interest and penalties shall belong to the county."

Said Chapter 33 (Section 2235, R. C.) reads: "The proceeds of every such sale shall be paid over to the county treasurer, who shall apportion and distribute the same in the following manner:

"1. If such proceeds are in excess of the aggregate amount of all taxes and assessments accrued against such property for all funds and purposes, without penalty or interest, then so much of such proceeds shall be credited to each fund or purpose, as the same would have received had such taxes been paid before becoming delinquent, and all excess shall be credited to the general fund of the county.

"2. If such proceeds shall be less in amount than the aggregate amount of all taxes and assessments accrued against such property for all funds, and purposes, without penalty or interest, then such proceeds shall be prorated between such funds and purposes in the proportion that the amount of taxes and assessments accrued against such property for each such fund or purpose bears to the aggregate amount of taxes and assessments accrued against such property for all funds and purposes."

The exact words of this last section are carried over without change from Chapter 162, Laws of 1929,

Opinion No. 310.

Taxation—Tax Deed Land, Distribution of Proceeds of Sale—Tax Deed Land, Distribution of Proceeds of Lease—Statutes, Construction Of.

HELD: 1. The proceeds of sale of all tax deed property of a value in excess of \$100, sold for cash or on contract should be distributed according to Section 2235, R. C. M. 1935, as finally amended.

2. The proceeds of leasing tax deed lands should be distributed according to Section 2208.2, R. C. M. 1935.

June 29, 1936.

Hon. Frank H. Johnson
State Examiner
The Capitol

You have called attention to Chap-

which it otherwise amended. The last named chapter carried over the wording of Chapter 85, Laws of 1927, which it amended in other particulars. Chapter 85 amended Section 2235, Revised Codes 1921, which simply said: "The money arising from such sale must be paid into the county treasury, and the treasurer must settle for money so received as other state and county money."

It appears therefore that it was the intention of the Twenty-third Legislative Assembly (1933) to provide the same distribution of funds as provided by the Twenty-first and the Twentieth Legislative Assemblies, unless Section 3 above quoted discloses a different intention. It is the rule that "where two statutes are in apparent conflict, they should be so construed, if reasonably possible, as to allow both to stand and to give force and effect to each, and if it is not possible to reconcile them, the dates of their enactment will be examined in determining the legislative intent, and effect given to the later one." (59 C. J. 1042, Section 619.)

In so far as the two different provisions are in express conflict the later Act must prevail. Said Chapter 65 (Section 2208.2) imposes additional duties upon county commissioners with reference to sale of lands acquired by tax deed. Among other things the county commissioners are required to order a sale of such lands within six months after acquiring title. It is my opinion that said Section 3 of Chapter 33 (Section 2235.2) had reference to such additional duties which might be construed to be repealed by implication without such saving clause and that the Twenty-third legislative assembly intended that the provision as to the distribution of proceeds of sale expressly provided for in said Chapter 33 should operate. It could hardly be contended that the legislature did not intend to enact what it expressly declared. To the extent, therefore, that said Chapter 65 (Section 2208.2) conflicts with Chapter 33 (Section 2235), the latter must prevail.

The proceeds of sale of all tax deed property of a value in excess of \$100 sold for cash or on contract, should be distributed according to said Sec-

tion 2235 as finally amended. Since this section does not provide for the distribution of moneys received from leasing of such lands, such money would be distributed according to Section 2208.2. Since the only difference in the two sections is that Section 2208.2 requires the payment of penalty and interest before the excess shall be credited to the general fund, while Section 2235 does not, and since the proceeds from leasing lands are not likely to exceed the amount of taxes and assessments without penalty and interest, in practical effect there would seem to be no difference. Section 2208.2 as amended, being a later act, must prevail over subdivision 28, Chapter 100, Laws of 1931, to the extent of the conflict between the two.