

Opinion No. 344.**Taxation—Tax Deeds—Tax Certificates—Counties—County Commissioners.**

HELD: 1. Section 2197, R. C. M. 1935, requiring a redemptioner from tax sale to reimburse the assignee of a tax sale certificate, does not apply to the state or counties; nor is there any statute which, either expressly or impliedly, gives the Board of County Commissioners the right to put the county in the position of a redemptioner.

2. Section 2215.1, R. C. M. 1935, which provides for an action to secure tax deed, limits the right of action therein granted to the holder of the tax sale certificate.

August 20, 1936.

Mr. Eric Moun
County Attorney
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From your letters of August 11 and 15, and from a letter of August 13 received by us from the County Commissioners of your county, it appears that a tract of land was sold for delinquent taxes and struck off to the county for the 1925, 1926 and 1927 taxes. Tax certificates were issued to the county at the time of the sales, and thereafter on October 11, 1928, each of said certificates was assigned to a third party who is the present holder and owner thereof. Taxes were then assessed against this tract for each year thereafter to date, but none

of these subsequent assessments has been paid.

Your letter of August 15 states that "no subsequent tax sale certificate has been issued," but we are not advised if any sales of said land have been made for the taxes which have become delinquent since the assignment of the certificate.

The county has now instituted an action in the District Court to obtain a tax deed pursuant to Sections 2215.1 to 2215.9, R. C. M. 1935, inclusive, and you have advised the board of county commissioners that "in order to complete the action" it is necessary for the board to reimburse the assignee with the amount he paid for the certificates and one (1) per centum additional for each month that elapses from the date of sale to date. (See Section 2197, R. C. M. 1935.) The board is of a contrary opinion, and contends that "we can rule him out in our tax deed proceedings unless he pays up the subsequent delinquent taxes."

It is our view that the board of county commissioners is without authority to reimburse the assignee out of the public funds of the county, and that Section 2197, R. C. M. 1935, does not apply to the state or counties. Boards of county commissioners have only those powers that are granted to them by law (*Judith Basin County v. Livingston*, 89 Mont. 439, 298 Pac. 356), and we are unable to find any statutory provisions which, either expressly or impliedly, give the board the right to put the county in the position of a redemptioner. On the contrary, the apparent theory of our tax sale laws is that it is the duty of the county commissioners to see that the taxes are collected by the proper officer, and not to acquire title to real estate. *Rush v. Lewis and Clark County*, 36 Mont. 566, 93 Pac. 943.

It cannot be doubted that the ownership of a valid tax sale certificate is a condition precedent to the issuance of a tax deed (61 *Corpus Juris* 1335; *Cooley on Taxation*, 4th Ed., Section 1466.) And it is our opinion that Section 2215.1, R. C. M. 1935, limits the right of action therein granted to the holder of the tax sale certificate. We are, therefore, unable to understand by what theory the county may

properly obtain the relief sought in the action now pending.

But this conclusion does not leave the county without remedy. If the land has been sold for the taxes which fell delinquent subsequent to the assignments above referred to, we see no reason why such subsequent sales may not be made the proper basis of the application for a tax deed. We do not believe that the aforesaid assignee would have any interest in the land which could interfere with such an application. Assuredly, Section 2197, *supra*, was never intended to permit anyone to cripple the government in the collection of its taxes. If it were otherwise, a person could purchase a tax certificate for a certain year, refuse to pay subsequent taxes, fail or delay to apply for a tax deed and bar the state and county from collecting its revenues, unless the county repaid or redeemed the prior certificate of lien plus interest which conceivably might accumulate to an unconscionable amount. Clearly, this is not the effect or the intent of the law, and its plain language precludes any such construction. *Whatcom County v. Black*, 90 Wash. 280; 61 *Corpus Juris* 1322, 1327.

In *Comstock-Ferre & Company v. Devlin*, 79 Minn. 68, 108 N. W. 888, the court held: "After a person has acquired an (inchoate) tax title, it is necessary that he should protect that title by paying the future taxes. If he fails to do so the state will convey a better title to someone else."

We have not been advised if there have been any subsequent sales. Your letter simply states: "No subsequent tax sale certificate has been issued." But it may very well be that the sales were made without a certificate having been issued. In that event it would not be too late to make and deliver a certificate now. (See Opinion No. 118 issued by this office.)

But if the county officers have failed to sell the land for the subsequent taxes it will, of course, be necessary to commence proceedings anew, and again sell the land before a valid tax deed may be issued. (See Volume 13, Report and Official Opinions of the Attorney General, page 208.)