

Opinion No. 52.**Taxation—State Lands, Lien on
Improvements for Taxes.**

HELD: Where state lands which have been sold under contract are retaken by the State and the certificate of purchase for same cancelled, the lien for taxes of the county and state on the improvements is superior to any claim of the state to a lien for any other purpose.

February 26, 1935.

Hon. I. M. Brandjord
Commissioner of State Lands
The Capitol

Your inquiry, briefly stated, covers this question: Where state lands sold under contract are retaken by the state and the certificate of purchase for same cancelled, do the improvements thereon belong to the state or are same subject to the lien of counties for delinquent taxes assessed against such property?

In the absence of statute, the lien for taxes upon such improvements constitutes a lien prior and superior to other liens, and such property may be sold to enforce such tax lien. The same principle applies to lands owned by the federal government—improvements thereon may be considered as personal property and collected as other taxes upon personal property.

Section 81 of Chapter 60 of the Laws of 1927, provides: "The state shall have a lien prior and superior

to all other liens, excepting threshermen's liens and seed liens as specified in Sections 8355 and 8366 of the Revised Codes of Montana, 1921, which shall have priority as specified in Chapter 116 of the Session Laws of 1925, upon all buildings, structures, fences and all other improvements upon the lands so sold and also upon all crops growing upon any of these lands, and also upon such crops after they have been separated from the lands, for all due and delinquent installments of principal and interest and penalty interest and taxes under the certificate of purchase and also for all installments becoming due during the calendar year in which the crop is harvested, and such lien is hereby expressly reserved."

As the lien of the state itself, under this statute, includes a lien for taxes it appears that this section was not intended to prevent the collection of taxes. Rather does it appear that it was intended to aid in the collection of taxes. The state, upon the cancellation of its contract, receives back the land sold. It appears just and equitable that the county is entitled to collect its delinquent taxes by a sale of the improvements upon such lands and the state is not wronged by such procedure. It is, therefore, held that the lien of the county and state for taxes is superior to any claim of the state to a lien on this property for any other purpose.