

Opinion No. 66.

**Taxation—Personal Property, Lien of
Tax On—County Commissioners—
Illegal Taxes, Collection Of.**

HELD: 1. The tax upon personal property belonging to purchaser of real estate on contract, title to which remains in vendor, is not a lien upon such real estate.

2. The county commissioners may

prevent the collection of an illegal tax and, if necessary, correct the records.

March 23, 1935.

Mr. H. H. Longenecker
County Treasurer
Hamilton, Montana

Upon request of the county commissioners, you have submitted the question whether the county treasurer may legally collect from the vendor of real estate taxes upon personal property belonging to the purchaser, which personal property together with the real estate was assessed in the name of the purchaser.

The facts, so far as we are advised, are these: The purchaser never received the deed to the real estate as he defaulted on the contract. The vendor has paid the 1931 taxes on the land and has tendered the taxes on the land subsequent thereto, but the county treasurer refuses to accept them because such tender does not include the tax on the personal property belonging to the purchaser, which appears to be a lien on the real estate since both the real estate belonging to the vendor and the personal property belonging to the purchaser were assessed to the latter. The vendor refuses to pay the taxes upon the personal property belonging to the defaulting purchaser.

We are not advised as to why the assessor assessed the real estate belonging to the vendor in the name of the purchaser. Had the assessment been made in the name of the vendor, the owner of record thereof, no difficulty would have arisen as the personal property of the purchaser would not then have appeared as a lien against the real estate. Chapter 18, Laws of 1925, amending Section 2153, R. C. M. 1921, provides that "every tax due upon personal property is a lien upon the real property of the owner thereof." The same language was used in Chapter 182, Laws of 1933, amending said Chapter 18.

It has heretofore been held by this office that the holder of the legal title alone should be considered the owner of the land and that the lien of the tax upon the personal property of the purchaser would not attach as a lien

upon the land. (See Volume 10, Opinions of the Attorney General, page 287, and Volume 9, Opinions of the Attorney General, page 440.) With these opinions we agree. This is not a question of an "illegal levy" upon either the real or personal property. (See *First National Bank v. Sanders County*, 85 Mont. 450, 279 Pac. 247.) Both the levies upon the real estate and the personal property are legal. Hence the remedy of the taxpayer as provided by Section 2269, R. C. M. 1921, as amended by Chapter 142, Laws of 1925, is not applicable. The question rather is one of a tax "illegally collected," or attempted to be collected, and therefore Section 2222, R. C. M. 1921, providing for the refunding of taxes illegally collected, would be applicable. Here an attempt is being made to collect from A the tax due from B on property belonging to B. This is illegal because, as we have shown above, the tax on B's personal property is not a lien upon A's real estate. An "illegal collection" of a tax is attempted. Since the county commissioners have authority to refund a tax illegally collected, they necessarily have the authority to prevent it in the first instance as there would be no purpose or equity in collecting illegal taxes and then ordering a refund. (See opinion given to *Bertha M. Lorenz*, May 20, 1933, No. 214, Volume 15, Opinions of the Attorney General.) The manifest error in the records should be corrected.

The facts in this case, so far as we know or understand them, in our opinion, do not constitute an estoppel as against the vendor. It would certainly require a very strong showing indeed to permit the county to collect from one, taxes which should be paid by another.