

Opinion No. 208.

**Water Conservation Board—Taxation.
Lands Acquired or Held by
Board Exempt.**

HELD: 1. Lands acquired by water conservation board are free from any tax lien, except where tax certificate assigned or purchased by parties other than county.

2. Lands owned by water conservation board are exempt from taxation.

3. Chapter 114, Laws 1937, held constitutional.

December 8, 1937.

State Water Conservation Board
Helena, Montana

Dear Sirs:

You inquire as to the validity of Chapter 114 of the Laws of 1937 being: "An Act to Exempt From Taxation Lands Owned by the State Water Conservation Board of the State of Montana for Use in Water Conservation Projects and to Provide for the Cancellation of Taxes Remaining Unpaid Against Said Lands When Same Are Acquired by the State Water Conservation Board or the State of Montana for Such Purposes."

The purpose of such statute appears to be clear and within the terms of the title. It exempts from taxation lands held by the State Water Conservation Board, and authorizes the cancellation of taxes upon lands acquired by the Board for the State of Montana except in cases where tax certificates are assigned or purchased by parties other than the county. Therefore, the statute is valid unless some constitutional provision forbids same. A statute is not to be held unconstitutional unless its unconstitutionality is clear. The constitutional provision which appears to be most nearly involved in this question reads as follows:

"Sec. 39. No obligation or liability of any person, association or corporation, held or owned by the state, or any municipal corporation therein, shall ever be exchanged, transferred, remitted, released or postponed, or in any way diminished by the legislative assembly; nor shall such liability or obligation be extinguished, except by the payment thereof into the proper treasury."

Sec. 39, Article V.

This provision of the constitution has been interpreted as forbidding legislation which will permit a county to cancel taxes owed it.

Yellowstone Packing Co. vs. Hayes, 83 Montana, 1;

State ex rel. Sparling vs. Hitsman, 99 Montana, 521.

However, it has been held by the Supreme Court of this State that taxes upon real property constitute a lien

against the real property and may not be collected by action.

State ex rel. Tilman vs. District Court, 101 Montana, 176.

At page 183 of such opinion, the Supreme Court states:

"It is therefore clear that plaintiff's lien, akin to a judgment, will hold until the taxes are paid or a deed to the property is secured, and no right exists by statute to collect the taxes by action in court, either at law or in equity."

Attention is directed to the fact that the constitutional prohibition is directed to persons, associates, or corporations, and does not apply to cases where a state or subdivision thereof is entitled to taxes, which, if paid, must be paid from public funds and in the remission of which one state agency is relieved from an obligation to another state agency.

"The tax law of the State applies to persons only and not at all to political bodies like municipal corporations which exercise in different degrees the sovereignty of the State." (Desty on Taxation, 48.)

"On the other hand taxes levied on private property and not paid are not a charge on the property subsequent to its acquisition by the State or City, the public property exemption operating to exempt property acquired by the State from any further liability, from taxes assessed prior to the acquisition, although there are decisions to the contrary." (61 C. J. 418.)

The reason for this ruling is fully explained by the Supreme Court of New Mexico in the case of State v. Locke, 219 Pac. 790; 30 A. L. R., 407. In said case and the note following same, many authorities are cited to sustain the position that after the acquirement of the land by the State, the taxes are in effect cancelled. The note in question begins as follows:

"This annotation supplements an annotation upon the same subject in 2 A. L. R. 1535.

As shown in the annotation referred to, with the exception of the Supreme

Court of Michigan, the cases are agreed that where property, subject to the lien of a tax, is acquired by the state or any of its agencies for a public purpose, it thereby becomes freed from such lien, and further steps to enforce it are without effect."

30 A. L. R., 413.

If it is a case where property is so acquired, it terminates the tax liens and all right to enforce same against the state, the legislature would have the authority to permit the cancellation of such taxes when same appears to be in the public interest.

It is therefore held that there is not sufficient legal authority to warrant holding that this statute is unconstitutional and therefore the County Treasurers should obey its injunction within the limits of such statute.