

er or not advances made in the form of Old Age Allowances are preferred claims against the property of the recipient, and have priority over regular county, school and city taxes.

Chapter 170, Section 21 of the Session laws of the 24th Session, 1935 provides:

“At the death of a person to whom the assistance is granted or the last survivor of a married couple, the total amount of assistance since the first grant, together with five per centum (5%) of interest, shall be deducted and allowed by the proper courts out of the proceeds of his or her property as a preferred claim against the estate of the person so assisted and refunded to the state and county in the proportion of the assistance paid by each, leaving the balance for distribution among the lawful heirs in accordance with law.”

Section 2154, R. C. M., 1935, provides:

“Every tax due upon real property is a lien against the property assessed: and every tax due upon improvements upon real estate assessed to others than the owner of the real estate is a lien upon the land and improvements; which several liens attach as of the first Monday of March in each year.”

The general tax laws of the State provide for the levying of taxes, and collection thereof, designate when same become delinquent, and provide the method of enforcement and payment of the tax lien.

Under Section 2215.9 R. C. M., the county has the right to take a tax deed for a freehold, free of all encumbrances and clear of any and all claims of said defendant to said action except the lien for taxes, which may have attached subsequent to the sale, and the lien of special improvements.

Under Section 21, Chapter 170, while the money paid to these old age people becomes a preferred claim against their estates, yet this preferred claim or lien can only mature upon the contingency of death; it cannot ripen or become delinquent at any fixed, definite, or stated time, thus differing from the general property taxes.

#### Opinion No. 27.

#### Taxes—Preferred Lien. Old Age Pension Grants. Taxes Preferred To.

HELD: General taxes have a priority lien over that created by payment of old age pension grants.

January 25, 1937.

Montana Relief Commission  
Mr. Joseph E. Watson  
Administrator  
Helena, Montana

Dear Mr. Watson:

Beg to acknowledge your request for an opinion from this office. To your request you attach a letter from Mr. John B. Kemp, District Administrator at Missoula, inquiring as to wheth-

General taxes and general tax laws are superior and dominant to special taxes and special tax laws.

State v. Jeffries 83 Mont. 111.

The county would be, under our general tax law, authorized to take a tax deed for this property if delinquent, without consideration of any funds paid under the Old Age Pension, and therefore it necessarily appears that the amounts paid under the Old Age Pension Act are not construed in the general sense and definition of a tax, but are merely preferred claims against general claims to the assets of the recipient's estate.

It is therefore my opinion, that the lien for county, school, city or other general taxes is prior to the lien created under the Old Age Pension Act.