

Mortgagee may not re-purchase with same rights of owner of lands sold to county for taxes.

Bond holders may combine their several claims so as to give the federal court jurisdiction.

February 6, 1937.

Mr. E. P. Conwell
County Attorney
Red Lodge, Montana

Dear Mr. Conwell:

You have submitted the following:
"1. Does the statute of limitations run on bonds the same as it does on promissory notes?"

It may be stated generally that the period of limitations governing promissory notes also governs bonds. See 37 C. J. 752, Section 80; p. 714, Section 29; p. 715, Section 32. In this connection, however, we call attention to the general rule that where a municipal or quasi-municipal corporation issues its obligations such as bonds or warrants to be paid out of a particular fund, it is under an implied obligation to do whatever is reasonable and fair to make that fund good, and cannot set up the statute of limitations until it has money in its treasury to redeem them. (19 R. C. L. p. 763.) (Section 128, and cases cited in footnotes; 37 C. J. 813, Section 158, and cases cited in footnotes.) To this rule are certain exceptions. It does not apply to ordinary bonded indebtedness. (*Schoenhoeft v. Kearny County*, 76 Kan. 883, 92 Pac. 1097, 14 Am Cas. 100; 16 L. R. A. (n.x 803). A collection of cases will be found in the last stated volume. Compare the following cases:

Little v. Emmett Irrigation District, (Ida.) 263 Pac. 40, 56 A. L. R. 823;

People v. Honey Lake Valley Irrigation District, (Cal. 1926) 77 Cal. App. 367, 246 Pac. 819;

San Francisco Savings Union v. Reclamation District, (1904) 144 Cal. 639, 79 Pac. 374;

Carter v. Tilghman, 51 Pac. 34, 119 Cal. 104;

Farwell v. San Jacinto & Pleasant Valley Irrigation District, (Cal. 1920) 192 Pac. 1034;

Rialto Irrigation District v. Stowell, 246 Fed. 294.

Opinion No. 37.

County Commissioners — Bonds — Bondholders—Statute of Limitations —Taxation—Tax Deed Lands—Redemption—Mortgagee's Rights to.

HELD: Generally speaking the statute of limitations runs against bonds.

The owner of land sold for taxes, need not pay interest accumulations subsequent to date of tax certificate.

See also collection of cases in the annotation found in 56 A. L. R. 830. See also opinion of the Attorney General, dated May 11, 1936, addressed to County Attorney McKenna, which opinion has not been published in the bound volume of the opinions of the Attorney General.

"2. Do Sections 2235 and 4465.9 R. C. M., 1935, permit a taxpayer, whose property has been deeded to the county for taxes, to repurchase the property at any time before it is sold by the county at public auction by payment to the county of the full amount of the taxes, penalty and interest for which the property was sold to the county? That is, for the principal amount specified in the tax certificate upon which the county tax deed is based?

"In other words, are the taxpayers required to pay interest accumulations subsequent to the date of the tax certificate or any tax deed costs, and, if so, may the taxpayers purchase the property under an installment contract with annual payments?"

Section 2235 provides:

"**** Provided further that at any time before such sale, the taxpayer whose property has been deeded to the county may purchase such property by payment to the county of the full amount of the taxes, penalties and interest for which such property was sold and such purchase any payment may be effected by an installment contract with annual payments, as provided in section 4465.9."

Since the statute does not require payment of accumulative interest after the tax deed is obtained, in my opinion the owner is not required to pay such interests accumulations.

"3. May the mortgagee redeem said lands in the same manner that the former owner may redeem them and under the same conditions?"

I am unable to find any provision in the law which permits a mortgagee the privilege of purchase, such as is given the owner. He, of course, may redeem before tax deed issues.

"4. In the event that the county commissioners deal with the 92%

of the bond holders mentioned in Mr. Wood's letter, what, if anything, can be done by them to keep the other 8% from coming in and collecting the full amount of their bonds, together with accumulated water assessments?"

The 8% of the bond holders, in my opinion, may collect according to their bonds unless the statute of limitations has run or unless the county commissioners, by mutual agreement with them, are able to effect a reduction.

"5. May the bond holders join their claims, if they are less than \$3000.00, so as to give the Federal Court jurisdiction in the event that they were to bring a law suit against the county for the collection of the bonds with accrued water assessments?"

In my opinion bond holders may combine their several claims so as to give the federal court jurisdiction.