

Opinion No. 58.**Counties—Tax Deed Lands.**

HELD: A County may not take tax deed to lands after February 28th, 1937, in view of the provisions of Senate Bill No. 1, which became effective on the 1st day of March, 1937.

March 11, 1937.

Mr. I. W. Choate
County Attorney
Miles City, Montana

My dear Mr. Choate:

You have requested of this office an opinion upon the following statement of facts.

On December 31, 1936, in conformity with the statute, Custer County gave notice of application for tax deed to certain property which lands had not been struck off to the county for non-payment of taxes. The notice of application for tax deed informed the owner of the property that the time for redeeming the property from tax sale would expire on the second day of March, 1937; and that if said property was not redeemed from the sale on or before that date, Custer County would apply to the county treasurer for a tax deed to the property.

On March 1, 1937, the governor of Montana signed Senate Bill No. 1, which became effective on that date. You have set out Section 1 of said act in your communication, and which is as follows:

"That from and after the passage and approval of this Act, any person having an equitable or legal interest in real estate heretofore sold for taxes to any county or which has been struck off to such county when the property was offered for sale and no assignment of the certificate of such sale has been made by the County Commissioners of the county making such sale, or on which taxes are delinquent for the first installment of the year 1936, shall be permitted to redeem the same by paying the original tax due thereon, and without the payment of any penalty or interest thereon. Such redemption of real estate must be made on or before the first day of December, 1938, and if such redemption is not made by the first day of December, 1938, then redemption can only be made by payment of the original tax with accrued interest, penalties and costs as now provided by law. This act shall not apply to the purchaser of any certificates of sale made prior to the passage and approval of this act."

In your opinion rendered March 5, 1937 to the county clerk of your county, you advised him that Senate Bill No. 1 became effective on March 1, 1937, and that Custer County is without jurisdiction to take tax titles under the proceeding heretofore pursued by it and referred to by you in your opinion to the county clerk. In your view of the law and conclusion reached, this office agrees.

Under Senate Bill No. 1, the time in which the county can take a tax deed is extended to the first day of December, 1938. The only serious question to be considered, is whether or not Senate Bill No. 1 is constitutional. The case of *State ex rel Sparling v. Hitsman*, 99 Mont. 521, is authority in holding this act valid, legal and constitutional. Chapter 88 of the 24th Session Laws, 1935 was enacted into law March 5, 1935 and extended the right of redemption until the first day of December, 1935. With the exception of the period of time, Chapter 88 is practically identical, particularly in Section 1, with that of Senate Bill No. 1, Chapter 70, of the 1937 Session Laws. In the *Sparling* case, the court held that Chapter 88, *supra*, did not violate Section 39 of article 5 of the Constitution, which provides:

"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."

The court's theory was that the remission is in effect penalty, and was not a part of the tax, nor of the obligation, and the court said, therefore, the remission of such interest or penalty, "Does not impinge upon the provisions of Section 39, article 5 of the Montana Constitution."

The principle upon which the *Sparling* case was decided was not based upon the period of time in which the payment of taxes was extended, but was based upon the principle I have just referred to, and while Senate Bill No. 1 extends the time of redemption from March 1st until the first day of December, 1938, such period of time is not an unreasonable period of time, and the legislature so determined, and said period of time does not extend beyond a legislative term of two years, and inasmuch as the *Sparling* case had overruled two other cases, I am of the opinion that Senate Bill No. 1, having the same general principles as Chapter 88, is valid and not in conflict with the constitution.