

Opinion No. 97.**Taxation — Special Improvement Assessments — Counties — Cities—
Lien on Tax Deed Lands.**

HELD: The county must pay improvement taxes and assessments due on tax deed lots acquired by it from the surplus proceeds from sale of such lots.

Special improvement taxes are a lien on city lots taken by county on tax deed.

May 4, 1937.

Mr. George F. Higgins
County Attorney
Missoula, Montana

Dear Mr. Higgins:

You ask our opinion on the following facts: It appears that the County of Missoula took tax deeds to certain lots in the City of Missoula on December 15, 1936. Improvement district taxes were levied by the City of Missoula by virtue of improvement districts created from the years 1922 to 1930. It appears also that there were city general taxes levied against all of these lots.

From the facts stated, it appears that the County of Missoula sold these lots which they had acquired by tax deed, and received a sum of money from the sale thereof in excess of the amount of taxes owing the County of Missoula. The question involved has reference to the disposal of this surplus money, and whether or not the entire amount, including the surplus, shall be retained by the County of Missoula or paid to the City of Missoula.

Section 2215.9 provides:

"The deed hereafter issued shall convey to the grantee the absolute title free of all encumbrances, except the lien for taxes which may have attached subsequent to the sale, and the lien of any special or local improvement assessments levied against the property payable after the execution of said deed."

Of course, the County of Missoula after they acquired the lots by tax deed, being the owner of the property, could not tax the same as a county. When the county acquired the lots they were removed from the tax rolls as far as the county was concerned.

Inasmuch as these lots were acquired by the County of Missoula December 15, 1936, all accruing special improvement assessments in the City of Missoula became a lien upon said property from the date that Missoula County acquired said tax deeds. In other words, any special improvement assessments which were levied against the property, and which were payable after December 15, 1936, are a lien against these lots and the County of Missoula is liable to pay the city those special improvement taxes, and said taxes became a lien upon the lots. Neither the acquisition of the lots by tax deed, nor the sale of the lots by the County of Missoula extinguished those liens. However, there is no personal liability by the County of Missoula to pay said taxes, because the lots are security for the payment of the same, and amounts due are liens upon the lots.

In 61 Corpus Juris 1041, Section 1353, it is said:

"In the absence of any satisfactory provisions to the contrary it is generally held that no personal liability exists for taxes assessed on realty."

And at page 1212, Section 1640, it is said:

"The proceeds from a tax sale must be paid into the proper treasury and applied in discharge of the various taxes and costs against the land, being distributed in the proper proportions among the different municipalities and taxing districts interested, by the proper official."

Section 2154, R. C. M., 1935, states that the tax is a lien on the property.

Section 5247 states the special assessment is a lien against the property.

Section 5251 makes it the duty of the County Treasurer to collect said taxes.

In the case of the State against McFarlan, 78 Montana 156, it has been held that it is the duty of the County Treasurer to collect city taxes where a city has not imposed that duty upon its own treasurer.

Section 5251.1 authorizes the city to provide by ordinance for the collection of certain taxes.

Inasmuch as the lien of any special or local improvement assessments, levied against the property payable after the execution of said deed, makes it incumbent and mandatory upon the county to pay to the City of Missoula special improvement taxes that were levied against the property, and those special improvement taxes which were payable after the county acquired the tax deed, then it must necessarily follow that the County of Missoula must pay out of the surplus amount that they received for the property such an amount as will cover the accrued taxes against said lots, to the City of Missoula, after December 15, 1936.

While not necessary in the answering of your question, yet in order to facilitate and aid you in this matter, following the same principle of law, it necessarily follows that the County of Missoula, out of the proceeds of the tax sale, upon the lots that they have sold to third persons, whether there be a surplus or not, should pay to the City of Missoula the local improvement assessments levied against the property payable after the execution of the deed which deed was executed December 15, 1936. In other words, the accrued special improvement taxes assessed upon these lots and payable after December 15, 1936, are a vested lien against the lots superior to all other liens, and superior to the ownership of the lots by the county, and the county is compelled to pay the same, and the lots are held as lien for said payment, and the County of Missoula is required by law to pay said special improvement taxes that are payable after December 15, 1936, the date upon which they acquired said tax deed, and until Missoula County thereafter sold said lots.