

## Opinion No. 267.

**Taxation—Tax Deed Lands—  
Distribution Proceeds Sale—  
Chapter 181, Laws 1939.**

HELD: Where the amount paid on contract for sale of tax deed lands before cancellation of the contract was not enough to equal the amounts the various funds would have received had the taxes been paid before becoming delinquent, the money received on a second contract for sale of the same lands should be credited to the various funds as provided by Chapter 181, Laws of 1939 until these funds have received the amounts they would have received had the taxes been paid before becoming delinquent, and the balance should then be credited to the general fund.

November 25, 1940.

Hon. W. A. Brown  
State Examiner  
The Capitol

Dear Mr. Brown:

You have submitted the following:

"1. A tract of land was acquired by the county. Original taxes (penalty and interest excluded) amounting to the sum of \$700.00.

"2. This tract was sold on contract for the amount of \$4,500.00.

"3. The first payment was made on same amounting to the sum of \$650.00 and was distributed in accordance with the provisions of law, i. e., each fund credited with the proceeds as the same would have received had such taxes been paid before becoming delinquent.

"4. The above referred to contract was cancelled by the board and the tract was again advertised and sold to another party on a contract calling for the amount of \$4,000.00.

"5. Payment was made in the amount of \$800.00. This last said payment of \$800.00 and the amount of the first said payment of \$650.00 exceeded the amount of taxes accrued against the property and the excess was credited to the General Fund of the county.

"There have been no further payments made on this second contract which was made and paid in May, 1936.

"6. In March, 1940 the amount of \$256.00 interest was paid on this contract and was credited in its entirety to the County General Fund.

"Now in view of these facts, we would like to have your opinions on the following questions of law:

"1. After the first contract was voided and money distributed in accordance with the statutes, and the land again was acquired by the county and sold on contract, should the first distribution be taken into account as satisfying the requirements of the proper distribution, or should this distribution be set aside and the proceeds of the second payment be distributed to each fund having an equity therein?

"2. Should the interest of \$256.00 be distributed according to equity as provided for by Chapter 181, 1939 Laws, or should it all go to the General Fund of the county?"

Chapter 181, Laws of 1939 provides for the disposition of the proceeds of sale of tax deed lands in the following manner:

"1. If such proceeds are in excess of the aggregate amount of all taxes and assessments accrued against such property for all funds and purposes, without penalty or interest, then so much of such proceeds shall be credited to each fund or purpose, as the same would have received had such taxes been paid before becoming delinquent, and all excess shall be credited to the general fund of the county.

"2. If such proceeds shall be less in amount than the aggregate amount of all taxes and assessments accrued against such property for all funds, and purposes, without penalty or interest, then such proceeds shall be pro rated between such funds and purposes in the proportion that the amount of taxes and assessments accrued against such property for each such fund or purpose bears to the aggregate amount of taxes and assessments accrued against such property for all funds and purposes."

In view of the language used we think it was the intent of the legislature that when tax deed property is sold the various funds should be paid the amount of the taxes and assessments

they would have received had the taxes been paid before becoming delinquent, but no more. If for any reason the first sale of the property does not accomplish this purpose because of cancellation then it should be accomplished by subsequent sale or sales. After the funds have received all they would have received had the taxes been paid before becoming delinquent the excess should be credited to the general fund, but until that has been done the statutory trust has not been discharged. The various funds should not be allowed to suffer because the purchaser defaults or for any other reason the contract fails and cancellation thereof does not remove the trust. After the funds have been fully paid they are entitled to no more and the excess should go to the general fund. We think this interpretation of the statute not only results in equity being done but carries out the general intent of the legislature.