

Dear Mr. Rognlien:

You have submitted, for my opinion, the following questions:

"In the event the county treasurer should assign a certificate of sale that was acquired by the county prior to the passage of this Act, it would appear that he should collect the amount of the original tax, plus penalty and interest from the purchaser. However, in the event redemption was made prior to February 1, 1941, the redemptioner would have to pay only the original tax. How then could the treasurer repay or reimburse the purchaser or assignee, under Section 2202 of the 1935 Revised Codes of Montana, the full amount of the original tax, plus penalty and interest, when he has collected only the amount of the original tax from the redemptioner?"

"As this law provides that redemption, under certain circumstances, can be made at any time prior to February 1, 1941, can the issuance of a tax deed, prior to that time, to the county, cut off that right of redemption? Or, does the right of redemption, by paying the original tax exist only until tax title is taken to said property by the county if taken before February 1, 1941?"

Section 1, Chapter II, Laws of 1939, permits redemption of real estate to be made from delinquent taxes, if made on or before February 1, 1941, by payment of the original tax, without penalty or interest, where no assignment of a tax certificate was made prior to the effective date of said chapter (February 7, 1939). This act authorizes the county to "assign certificates of sale in the same way, in the same manner and to the same extent as though this act had not been passed." Said authorization or language does not circumscribe the express language in said chapter, which extends the right of redemption to February 1, 1941, by the payment of the original tax, without penalty and interest. The mere fact that the county may assign the certificate of tax sale during the effective period of Chapter 11, does not mean that said certificate shall draw penalty and interest. Such certificate, whether acquired prior or subsequent to February 7, 1939, may be assigned by the

Opinion No. 38.

**Taxation—Tax Deeds — Redemption—
Penalty and Interest, When
Payable.**

HELD: 1. The county may take and assign tax certificates prior to February 1, 1941, and may also tax deeds.

2. County may not charge penalty and interest to purchaser of tax certificate assigned subsequent to February 7th, 1939.

3. Redemptioner of property sold for delinquent taxes to county prior to February 1, 1941, and subsequent to February 7, 1939, upon redemption from county or assignee of certificate before tax deed issued, may not be charged with penalty and interest.

4. Tax deed may issue prior to February 1, 1941, and upon issuance, right of redemption is foreclosed.

March 29, 1939.

Mr. D. Gordon Rognlien
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county during the period when Chapter 11 is in force and effect but shall not draw interest and penalty. The intent and general purpose of the act was to remit penalty and interest, if the original tax was paid by February 1, 1941, thus resulting in the easing of the taxpayer's burden and creating an incentive to meet his tax obligations. The Legislature recognized that economic conditions had distressed the taxpayer, making it difficult, if not impossible, to meet these obligations.

In view of the evil to be remedied, it is unlikely that the Legislature authorized the county to sell and assign a tax certificate during the effective date of said law, without subjecting it to the moratoria.

State ex rel. Boone v. Tullock, 72 Mont. 482;

Fergus Motor Co. v. Sorenson, 73 Mont. 122.

The mere fact that the county acquired the tax certificate prior to February 7, 1939, and assigned the same subsequent thereto, is immaterial. The remission of penalty and interest evidenced by said certificate is not equivalent to the remission of a liability or obligation owing to the state or subdivision thereof, and consequently does not impinge upon Section 39, Article V of the Montana Constitution.

Sparling v. Hitsman, 99 Mont. 521;

Opinion No. 57, Vol. 17, Opinions of the Attorney General.

The right of redemption of said certificate and the right to pay delinquent taxes by paying the original tax, without penalty and interest, is extended to February 1, 1941. During the interim, the county may apply for a tax deed, or assign the tax certificate for the amount of the original tax.

The tax deed conveys absolute title to the property and forecloses the right of redemption.

Chapter 119, Vol. 1, R. C. M. 1935;
State ex rel. City of Billings v. Osten, 91 Mont. 76.