

No. 34

**TAX SALE CERTIFICATES—ASSIGNMENT—AMOUNT
TO BE PAID ON REDEMPTION—NO REFUND BY
COUNTY—CHAPTER 11 AND CHAPTER 25,
LAWS OF 1939**

Held: Where the county has issued assignment of tax sale certificate to person having no equitable or legal interest in the real estate at the time of taking the assignment, redemption may be made only by paying amount for which the land was struck off to the county, with penalty and interest, together with subsequent taxes, if any, paid by the purchaser or his assignee, with interest thereon at eight per cent per annum from date of such payment. The county may make no refund.

February 24, 1941.

Mr. John D. Stafford
County Attorney
Cascade County
Great Falls, Montana

ATTENTION: Mr. Cleveland Hall
Deputy County Attorney

Dear Mr. Stafford:

You have submitted the following:

"John Doe, the owner of real estate in Cascade County, failed to pay the taxes due thereon for the years 1934 to 1937, inclusive. The property was purchased by the county which held the tax sales certificates. On May 5, 1939, the tax sales certificates were assigned to Richard Roe, who paid the penalties and interest to the date of the assignment. John Doe now desires to redeem the property from the tax sales and prior to February 1, 1941, tendered to the County Treasurer, the principal of the delinquent taxes without penalty or interest under the provisions of Chapter 11 of the Laws of 1939.

"The question to be determined is whether John Doe may redeem without the payment of such penalty or interest and if so, must the county refund such penalty and interest to Richard Roe."

In answering your inquiry you will note the Legislature provided by Chapter 70, Laws of 1937, that, from and after the passage and approval of the Act, any person having an equitable or legal interest in real estate heretofore sold for taxes to any county, when no assignment of the certificate of sale had been made thereon or on which taxes were delinquent for the first installment of the year 1936, would be permitted to redeem the same by paying the original tax thereon, without the payment of any penalty and interest thereon. The redemption had to be made before December 1, 1938. Redemption made after December 1, 1938, could be made only by paying original tax, penalty and interest and costs. It was provided the Act should not apply to the purchaser of any certificate of sale made prior to the approval of the Act.

In Section 3 thereof the Legislature commanded county and city treasurers to make no assignments of tax sale certificates until after the first day of December, 1938. This, of course, precluded the treasurers from making such assignments from the date of the approval of the Act until the expiration thereof December 1, 1938.

We now turn to Chapter 11, Laws of 1939, where the Legislature speaks again on the same subject, but in a different vein. We find the Legislature stating the law now applicable as follows:

"Section 1. 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 1938, 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 February, 1941, and if such redemption is not made by the first day of February, 1941, then redemption can only be made by payment of the original tax with accrued interest, penalties and costs as now provided by law. **Provided, that nothing herein contained shall be construed so as to limit, restrict or prevent boards of county commissioners from ordering that applications be made for the issuance of tax deeds, or the issuance of tax deeds to counties, or the assignment of certificates of tax sale by county or city treasurers during the period between the time this Act takes effect and February first, 1941, it being intended that during such period, boards of county commissioners may order applications to be made for tax deeds and that tax deeds may be issued to counties, and that county treasurers may 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. This Act shall not apply to the holder of any certificate of sale other than a county.**" (Emphasis mine.)

The above emphasized portion provides that boards of county commissioners shall proceed to take tax deeds as provided by statute and county and city treasurers shall assign certificates of tax sales, as provided by statute, all to the same extent, during the life of the Act, as though the said Act had not been passed. Then the Legislature, to make certain of the point you submitted, added the last sentence of Section 1 of said chapter:

"This Act shall not apply to the holder of any certificate of sale other than the county." (Emphasis mine.)

In other words, the Act applied in the event the certificate of sale had not been assigned by the Treasurer at the time the person having an equitable or legal interest in the real estate sought to make redemption, if such application was made on or before February 1, 1941; but in event the Treasurer had made assignment of the certificate of tax sale (as he is required to do by Section 2207, Revised Codes of Montana, 1935, as amended by Chapter 24, Laws of 1939, ". . . to any person who shall pay the amount for which the same was bid in, with interest upon the original tax at the rate of two-thirds of one per cent per month, . . ."), the Act did not apply.

Under Section 2210, Revised Codes of Montana, 1935, as amended by Chapter 25, Laws of 1939, we find that the redemptioner may redeem from the tax sale:

" . . . the redemptioner shall, in addition to the amount for which the said land was sold, with interest thereon, pay the subsequent taxes paid by the purchaser at such tax sale, or his assignee, with interest thereon at the rate of eight per cent per annum from the date of the payment of such taxes, . . . " (Emphasis mine.)

After the assignment of the tax sale certificate by the County Treasurer to a third party, the county has no more interest in said lands except to see that after maturing taxes and assessments are paid. The money paid into the hands of the County Treasurer for redemption belongs to the owner of the certificate of tax sale, the County Treasurer acting as trustee thereof; and the County Treasurer cannot accept any other sum on redemption than is provided in Section 2210, Revised Codes of Montana, 1935, as amended by Chapter 25, Laws of 1939.

It is my opinion where, as in this case, the county has already issued its assignment of the tax sale certificate to a person having no equitable or legal interest in the real estate at the time of taking said assignment and where there were no delinquent taxes for the year 1938, the redemptioner may redeem only by paying the amount for which the said land was struck off to the county, with penalty and interest thereon, and with the further payment of subsequent taxes, if any, paid by the purchaser or his assignee with interest thereon at the rate of eight per cent per annum from the date of such payment. Of course, it follows the county may make no refund of any penalty or interest.

An opinion of a former Attorney General, Opinion No. 38, Volume 18, Report and Official Opinions of the Attorney General, dated March 29, 1939, is hereby expressly overruled insofar as it relates to the question herein determined.

Sincerely yours,

JOHN W. BONNER
Attorney General