

No. 475

COUNTIES—COUNTY TREASURER—FEES—
TAXATION

Held: Fee of Three Dollars provided by Section 2206, Revised Codes of Montana, 1935, should be collected by County Treasurer, when tax deed is issued in pursuance of judgment of District Court.

September 2, 1942.

Mr. Milton G. Anderson
County Attorney
Richland County
Sidney, Montana

Dear Mr. Anderson:

You have asked this office for an opinion as to whether the county treasurer is entitled to receive from the purchaser a fee of three dollars for making a tax deed, when an action has been instituted and prosecuted to judgment under the provisions of Sections 2215.1 through 2215.9, Revised Codes of Montana, 1935.

These sections of the Revised Codes merely provide an additional optional method of procuring a tax deed; and, while it is true that Section 10 of Chapter 176 of the Session Laws of 1933, being the original enactment permitting such action, states that all acts and parts of acts in conflict therewith are thereby repealed, there is no specific repeal of Section 2206, Revised Codes of Montana, 1935, requiring payment of this fee.

The rule of statutory construction is that repeals by implication are not favored. (Ex Parte Naegele, 224 Pac. 269, 70 Mont. 129; London Guaranty and Accident Gov. Industrial Accident Board, 266 Pac. 1103, 82 Mont. 304; Nichols v. School District No. 3 of Ravalli County, 287 Pac. 624, 87 Mont. 181.) And in determining whether an implied repeal exists an effort should be made to harmonize the statutes involved and give effect to all the provisions. (State ex rel. Normile v. Cooney, 47 Pac. (2nd) 637, 100 Mont. 391.)

The fee provided by Section 2206 is not for passing on the evidence submitted to justify the execution of the deed, but is for the actual cost of the making of the deed; and, applying the rules of statutory construction above set forth, and in the absence of a specific repeal of the provisions requiring the fee, it is my opinion the fee is a statutory charge and should be collected, even though the deed is issued by reason of a judgment of court.

Sincerely yours,

R. V. BOTTOMLY
Attorney General