

No. 487

IRRIGATION DISTRICTS—TAXATION—STATE BOARD
OF LAND COMMISSIONERS

Held: Irrigation district assessments or taxes are a lien on state mortgage land; but there is no method of enforcing payment; the State Board of Land Commissioners has no authority to use funds under its care and control in payment thereof.

Tax Moratorium Statutes apply to irrigation district taxes or assessments. Statute in effect at time of payment of delinquent tax controls, rather than statute in effect at time of delinquency.

Taxes are levied against person, not against property. Tax liability is determined by ownership of property as of first Monday in March of each year.

September 21, 1942.

Mr. J. W. Walker
State Board of Land Commissioners
State Capitol Building
Helena, Montana

Dear Mr. Walker:

You have advised this office the Toole County Irrigation District has demanded payment of delinquent taxes or assessments on certain tracts of mortgage land owned by the State, and requested the opinion of this office whether the means existed to enforce collection thereof.

The matter of these taxes or assessments came before the Supreme Court of Montana in *Toole County Irrigation District v. State of Montana*, 104 Mont. 420, 67 Pac. (2nd) 989, and it was adjudged the taxes or assessments were good and valid and constituted a lien on the lands. The state contended the taxes or assessments could not be held valid as state lands could not be sold to satisfy the lien of the assessments. The court rejected this contention on the ground that the validity of the taxes or assessments did not depend upon the means by which payment was to be enforced, adding that it is not to be assumed the state will not find some means to discharge lawful taxes or assessments levied against its property.

The later case of *State v. Yellowstone County*, 108 Mont. 21, 88 Pac. (2nd) 6, was an injunction action to restrain county from taking a tax deed to state land because of delinquent drainage assessments. It was held state land is not subject to tax deed proceedings for the reason that the welfare of the entire state and its citizens is involved, and that valuable rights of the people might be lost thereby through malfeasance or misfeasance of state officers or employees.

The result of these decisions is that, although taxes or assessments constitute a valid lien on the land, there is no method of enforcements, and in addition, there is no authority granted to the state board of land commissioners to divert any of the funds under its care and control to the payment of these taxes or assessments. Consequently, the matter is one which will require legislative action.

Your request also asks for an opinion covering the following questions:

"1. Do irrigation district taxes come under the provisions of such tax moratorium legislation as Chapter 13, Laws of 1941, or does such legislation apply only to ordinary taxes upon real estate?"

"2. Is the rate of penalty and interest charged on these delinquent taxes governed by the statutes in effect at the time the taxes became delinquent or by the statutes in effect at the time they are paid?"

In *State ex rel. Sparling v. Hitsman*, 99 Mont. 521, 44 Pac. (2nd) 747, it was held the interest and penalty which are added for nonpayment of taxes merely provide a means of insuring prompt payment of taxes. They

are not a part of the tax itself. The case also held tax moratorium laws similar to Chapter 13, Laws of 1941, are constitutional.

It has heretofore been held by this office, in Opinion 211, Volume 17, Report and Official Opinions of Attorney General, that special improvement assessments are taxes within the meaning of tax moratorium laws.

The same rule would apply to irrigation district taxes or assessments. It is the opinion of this office such taxes or assessments come within the provisions of statutes similar to said Chapter 13, Laws of 1941, and further, the statute in effect at the time of payment of the tax or assessment governs, rather than the statute in effect at the time of delinquency.

Your request also asks for an opinion covering the following questions:

"3. One of the 40 tracts of land cited in the complaint was not owned by the State at the time the action was brought, having been deeded under purchase contract in 1928. Does the State have any liability for irrigation district taxes assessed in 1926-27-28, or should these be assumed by the present owner of the land?"

Section 2154, Revised Codes of Montana, 1935, provides every tax due upon real property is a lien against the property assessed, and the lien attaches as of the first Monday of March in each year.

Section 2152, Revised Codes of Montana, 1935, provides every tax has the effect of a judgment against a person.

In the case of *Hilger v. Moore*, 56 Mont. 146, 169, 182 Pac. 477, the Supreme Court states:

"Speaking strictly, there is but one subject of taxation—persons, natural or artificial. All taxes are levied against the person, not against property. It is the owner who is taxed because of his ownership, and his property but serves as the basis for computing the measure of his liability and as security for the discharge of the lien which the tax imposes."

It is, therefore, apparent that if the state owned the land on the first Monday of March in the years 1926, 1927, and 1929, the state is liable for the tax; if the state deeded the property before the first Monday of March, 1928, the purchaser would be liable for the tax levied that year and thereafter.

Sincerely yours,

R. V. BOTTOMLY
Attorney General