

No. 79

TAXATION—CONDEMNATION

Held: Lands under condemnation proceedings may be taxed until property actually vests in tax exempt ownership.

April 14, 1941.

Mr. Robert E. Purcell
County Attorney of Garfield County
Jordan, Montana

Dear Mr. Purcell:

You present a question as to the right to tax lands subsequent to the institution of condemnation proceedings and prior to the final order of condemnation.

Under the facts you present, it appears that, prior to February 16, 1935, condemnation proceedings were instituted against certain lands in your county by the federal government. On February 16, 1935, plaintiff was let into exclusive possession of the lands by court order. Such possession continued until the judgment of condemnation by the federal court on January 14, 1941. The award to the former land owner includes interest on the award to the date of judgment.

Property of the United States is exempt from taxation (Section 2, Article XII, Montana Constitution). If the United States held the taxable interest in the property during the period in question, taxation was improper.

Condemnation proceedings in this case were instituted by the United States of America, in accordance with the Federal practice which requires that such a procedure conform, as nearly as may be, to the procedure provided by law in the state in which it is brought. (28 U. S. C. A., Section 724.)

In the case you present, plaintiff was let into possession of the premises under Section 9952, Revised Codes of Montana, 1935, and the landowner was given interest on the award from the date when he gave up possession as required by Section 9945. This payment of interest was allowed for the use and occupation of the premises under the order allowing plaintiff to take possession. (*Helena Power Transmission Co. v. Spratt*, 40 Mont. 254, 106 Pac. 5.)

Under Section 9951, Revised Codes of Montana, 1935, the property vests in the plaintiff when the court makes a final order of condemnation and a copy of such order is filed in the office of the County Clerk.

Under Montana statute taxes become a lien upon real property on the first Monday in March of each year (Section 2154, Revised Codes of Montana, 1935), and under Section 2202, as amended by Chapter 72, Laws of 1937, property must be assessed to the person by whom it is owned or claimed, or in whose possession or control it was at twelve o'clock A. M. of the first Monday in March.

The occupation of the premises under the order of court was provisional only and such possession did not constitute equitable ownership in the land as was the case in *Calvin v. Custer County*, 111 Mont. 162, 107 Pac. (2nd) 134. The nature of such possession has been defined by the Montana Supreme Court in *State ex rel. Volunteer Mining Co. v. McHatton*, 15 Mont. 159, 38 Pac. 711, in the following language:

"It should be borne in mind in this consideration that the order for possession on review here is not final. . . . The taking of the property, or the ultimate divestiture of the owner thereof, has not been consummated, but only temporary possession given."

As previously pointed out, by express statute (Section 9951, Revised Codes of Montana, 1935), the property does not vest in plaintiff until final order of condemnation. The right of possession, use and occupation

of the premises remains in the person whose lands are being condemned until order of condemnation, unless the plaintiff is put into possession by court order under Section 9952. In that event, interest on the award is allowed in return for such temporary use of the lands. While the condemnee was here deprived of the use of the property, he has been given compensation (interest) for the surrender of such use and therefore must be considered in the same light as a person remaining in possession throughout the entire proceedings. It may be that, from a legislative point of view, an award of an amount equal to taxes accruing during such period, in addition to interest, might be considered a more equitable return for the loss of rents and profits from the land. That is, of course, a matter for legislative action.

The lands in question therefore may be taxed for the period between the filing of the condemnation petition and the final order of condemnation.

Bemis Hardwood Lumber Co. v. Graham County, 214 N. C. 167, 198 S. E. 843;

People v. Gill (Ill.), 9 N. E. (2nd) 581;

People v. Price, 282 Ill. 519, 118 N. E. 759;

Jones v. Morse Bros. Lumber Co., 171 Ga. 753, 156 S. E. 587.

Sincerely yours,

JOHN W. BONNER,
Attorney General