

Opinion No. 179.**Tax Deeds—County Sale—Irrigation District Assessments—Lands, Taxpayer or Successor Purchase of.**

Held: That taxpayer or successor in interest who purchases land to which county has taken tax deed before county sells same, as provided in last sentence of Section 1 of Chapter 171, Laws of 1941, must pay all irrigation district taxes and assessments against said land in addition to the county and state taxes.

February 24, 1944.

Mr. E. P. Conwell
County Attorney
Carbon County
Red Lodge, Montana

Dear Mr. Conwell:

You have requested an opinion of this office on the following question:

“Provided the taxpayer or successor in interest whose property has been deeded to the county desired to purchase such property by payment to the county of the full amount of the taxes, penalties and interest due on said land at the time of taking said tax deed as provided by Section 1, Chapter 171, Laws of 1941, does this amount include the irrigation district assessments which made up the larger portion of the amount for which the land was sold and tax deed taken?”

Section 7243, Revised Codes of Montana, 1935, provides as follows:

Whenever, pursuant to the provisions of the preceding section any lot, tract, piece or parcel of land included within and forming a part of any irrigation district created under the provisions of this chapter, or included within any extension of such district, shall be sold by the treasurer of the county wherein such land is situated, in the manner provided by law for the sale of lands for delinquent taxes for state and county purposes, and taxes or assessments of such irrigation district form all or a part of the taxes for which such lands are sold, it shall be the duty of the county treasurer making such sale or sales to place to the credit of the proper funds of such

irrigation district, out of the proceeds of such sale or sales, the total tax or assessment of such irrigation district, inclusive of the interest and penalty thereon as provided for by the general laws relating to delinquent taxes for state and county purposes, and whenever any such lands are struck off at such sale to the county wherein the same are situated, pursuant to the provisions of section 2191 of these codes, the county treasurer of such county must, upon the issuance of the certificate of tax sales to said county, issue to said irrigation district, and in its corporate name, a debenture certificate for the amount of taxes and assessments due to said irrigation district from said lands and premises so sold, inclusive of the interest and penalty thereon, which certificate shall be evidence of and conclusive of the interest and claim of said irrigation district in, to, against and upon the lands and premises so struck off to said county at such tax sale, and from and after the issuance of said certificate, the sum named therein and the taxes and assessments of said district evidenced thereby shall bear interest at the rate of one per centum per month from the date of said certificate until redeemed in the manner provided for by law for the redemption of the lands sold for delinquent state and county taxes or until paid from the proceeds of the sale of the lands and premises described therein, in manner provided for by section 2235 of these codes, and duplicates of such certificate so issued to said irrigation district shall be filed in the office of the county clerk and county treasurer of said county with the certificate of tax sale of said lands and premises."

Section 7245, Revised Codes of Montana, 1935, provides as follows:

"Upon the redemption of any lands so sold for taxes in the manner provided for by section 2201 of these codes, the county treasurer of said county, out of the redemption money, shall pay to the holder or holders of such certificate or certificates the sums for which the same were issued, with interest as therein provided to the date of the redemption of said lands."

From the above cited statutes it is conclusively shown that the legislature

intended to protect the bond holders in the event of failure to pay the assessments made to repay the bonds.

The treasurer after issuing the certificate provided in Section 7243, is accountable to the district for the amount of the certificate and interest upon redemption or upon sale by the county. The treasurer has no authority to otherwise dispose of the land. See in this respect *State ex rel. Malott et al. v. Cascade County, et al.*, 94 Mont. 394, 22 Pac. (2nd) 811, at page 401 of the 94 Montana Reports as follows:

"Summing up these statutes, it is seen that, upon the issuance of the debenture certificate, the irrigation district, or its vendee, is the owner of an interest in the land, which is never divested until the land is redeemed or sold. . . . In the absence of express statutory authority, the treasurer could not assign a debenture certificate. He has not any such authority. With respect to this his only function is to pay the holder of the debenture certificate in case the property is redeemed."

Also see the same case at page 403 of the 94 Montana Reports as follows:

"The county, as trustee, cannot lawfully do anything adverse to the rights of the bondholders, beneficiaries under the trust. After issuing the debenture certificate it can perform but two acts (or related acts) with respect to the lands: (1) Receive money paid upon redemption and distribute the same; (2) Obtain a deed to the lands, sell the same, and distribute the money received upon the sale."

It is my understanding from the contents of your letter that Sections 7242 to 7246 were in effect in their present form at the time of the issuance of the bonds on the irrigation district you mention. Under these circumstances the legislature cannot pass legislation which will affect the contract rights of the bondholders. (*State ex rel. Malott v. Cascade County, supra.*)

Chapter 171, Laws of 1941, does not specifically repeal or amend any of the statutes relative to irrigation districts. Nothing should be read into this chapter to either enlarge or detract from the rights of the holders of irrigation district bonds. It should be borne in mind that the county took these tax deeds before the amendment of Sections

2215 and 2215.9, Revised Codes of Montana, 1935, and therefore the tax deed creates a new title, free of all incumbrances, except the lien for taxes which may have attached subsequent to the sale. (State ex rel. City of Great Falls v. Jeffries, 83 Mont. 111, 270 Pac. 638.) It merely grants to the former owner or successor in interest a preference to purchase the land from the county subject to the reservations of Section 5, Chapter 171, Laws of 1941, at any time before the date fixed for such sale. Such former owner or successor in interest must pay to the county the full amount of taxes, penalties and interest due on said land at the time of taking said tax deed, and it must not be construed as discharging any of the rights that the bondholders had at that time.

The debenture certificate issued by the county under the mandate of Section 7243, Revised Codes of Montana, 1935, is outstanding, and the county is in reality a trustee for the bondholders. Therefore it may not do anything detrimental to them. It may sell the premises at public auction for the fair market value, but it has no authority to make any other sale that might deprive the bondholders of what they had coming at the time of the taking of the tax deed.

It is therefore my opinion that a former owner, or his successor in interest, wishing to take advantage of the provision contained in the last sentence of Section 1 of Chapter 171, Laws of 1941, must pay the full amount of the taxes, penalties, and interest due on the lands he wishes to purchase, and the word taxes as so used in the last sentence of this section, includes all irrigation district assessments and all taxes due on said lands at the time the county took the tax deed.

Sincerely yours,
R. V. BOTTMOLLY
Attorney General