

Opinion No. 253.**Tax Deeds—Oil and Gas Rights—
Rights of Holders of Oil and Gas
Rights.**

Held: Undeveloped oil and gas rights pass under a legally taken tax deed to the surface rights even though the owner of the oil and gas rights and the owner of the surface rights are separate persons, and regardless of when such rights were acquired, subject only to proper value of the tax proceedings, having been given to record owners.

October 6, 1944.

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

Dear Mr. Anderson:

You have requested an opinion of this office concerning the county acquiring rights to the gas and oil in place in lands taken through tax proceedings, when such rights were conveyed prior to tax delinquency by the former owner.

Your inquiry raises the question of the nature of a tax title. Under Section 2215, Revised Codes of Montana, 1935, the grantee receives the absolute title to the lands, subject however, to the liens mentioned in Chapter 63, Laws of 1937, which chapter our Supreme Court in *Cascade County v. Weaver*, 108 Mont. 1, 90 Pac. (2nd) 164, held amended said Section 2215. The oil and gas in place is by our courts considered real estate. Our statutes provide only one tax for real estate. Thus the tax lien is a lien on the entire real estate. The oil and gas in place being a part of the real estate would be a part of the security for the land tax.

Our courts have construed our tax deed statutes to originate a new and independent title, not derivative of the

original or tax delinquent owner, but direct from the sovereign. In this respect see *State v. Jeffries*, (Mont.), 270 Pac. 638, at page 640, as follows:

"However, 'the Legislature has power to provide either that a tax sale shall create a new title, cutting off all prior liens, incumbrances, and interests, or to provide that the tax purchaser shall acquire the interest only of the person in whose name the lands were assessed or of the real owner.' 3 *Cooley on Taxation* (4th Ed.) 2930, Sec. 1492. By the enactment of Section 2215, Revised Codes of 1921, providing that a tax deed conveys absolute title 'free from all encumbrances, except the lien for taxes which may have attached subsequent to the sale,' our Legislature adopted the first course. The tax deed mentioned is not derivative, but creates a new title in the nature of an independent grant from the sovereignty, extinguishing all former titles and liens not expressly exempted from its operation . . ."

Generally, it is held where there is but one tax on the real estate, as in our statutes provided, the tax lien covers the entire property. When a new title is created, not derivative of the delinquent taxpayer but from the sovereign, the tax deed passes all rights to oil and gas not developed prior to the county taking title by properly noticed tax proceedings, and the oil and gas rights, although separately owned, are passed by the tax proceedings from the former owner to the county or the tax deed purchaser. (See in this respect, 61 C. J. 1301, *Peterson v. Hall*, 50 S. E. 603, and *Gas Leases and Royalties*, Sec. Ed. Glassmore, 373, 374 and 379.) It seems appropriate to add here that as our statutes, particularly Section 2209 and 2215.1-2215.8, Revised Codes of Montana, 1935, provides for giving notice to the owners upon application or suit for tax deed, that in either instance record owners of oil and gas rights should be given such notice. If such notice was given, it seems that our legislature intended their rights to be eliminated as are the rights of the surface owner.

Therefore, under the Montana law, it is my opinion that undeveloped oil and gas rights pass under legally taken tax deed to the surface rights, even though the owner of the oil and gas

rights and the owners of the surface rights are separate persons and the owner of the oil and gas rights received his rights to the oil and gas from the owner of the surface rights prior to tax delinquency or even from a prior owner, subject, however, to proper notice having been given to record owners in the tax proceedings.

Sincerely yours,
R. V. BOTTOMLY
Attorney General