

Opinion No. 6.

**Irrigation Districts—Distribution of  
Proceeds From Sale of Tax Deed  
Property—Taxation—Lands—  
Tax Deed Land.**

Held: Where tax deed land sells for an amount in excess of taxes and assessments, excess should be distributed in accordance with laws in effect when bonds of irrigation district were issued and when tax sale was had.

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December 29, 1942.

Mr. W. A. Brown  
State Examiner  
State Capitol  
Helena, Montana

Attention: Mr. A. M. Johnson  
First Assistant

Dear Mr. Brown:

You have submitted a statement of facts showing that tax deed land, within the boundaries of an irrigation district, was sold by a county for an amount in excess of the taxes and assessments, and you request the opinion of this office as to the proper distribution of the proceeds of sale.

Section 3296, Political Code of Montana, 1895, dealing with sale of tax deed land, provides:

“The money arising from such sale must be paid into the county treasury, and the treasurer must settle for money so received as other state and county money.”

This provision of the code was carried forward in subsequent revisions of the codes and amendment to the section until the enactment of Chapter 85, Laws of 1927, effective as of March 8, 1927, when it was provided:

"The proceeds of every such sale shall be paid over to the county treasurer who shall apportion and distribute the same in the following manner:

"1. If such proceeds are in excess of the aggregate amount of all taxes and assessments accrued against such property for all funds and purposes, without penalty or interest, then so much of such proceeds shall be credited to each fund or purpose, as the same would have received had such taxes been paid before becoming delinquent, and all excess shall be credited to the general fund of the county."

Chapter 85, Laws of 1927, now appears as Section 2235, Revised Codes of Montana, 1935, as amended by Chapter 181, Laws of 1939, amendments subsequent to 1927, however, not making any change as to distribution of the proceeds of sale.

Commenting upon the effect of Chapter 85, Laws of 1927, in *State ex rel. Malott v. Cascade County*, 94 Mont. 394, 404, 405, 22 Pac. (2nd) 811, the Supreme Court stated:

"But it is said by counsel for defendants, under the express directions of Section 2235, as amended by Chapter 85, Section 3, of the Laws of 1927, upon a sale of the lands the excess over the amount of taxes, penalties, and interest shall be credited to the general fund of the county. This provision is inoperative so far as it affects irrigation districts and those interested therein. Such direction with respect to the excess is contained in a change in the law enacted after the contract was made, directly affects its discharge and enforcement, and to that extent impinges upon Section 10 of Article I of the federal Constitution, which provides that no state shall . . . pass any . . . law impairing the obligation of contracts."

The reason for this rule is set forth in *State ex rel. Malott v. Board of County Commissioners of Cascade*

*County*, 89 Mont. 37, 95, 296 Pac. 1, as follows:

"It has been suggested by counsel for respondents that the county holds title to these lands as a trustee. While this matter is not directly before the court for determination, yet we observe in connection therewith that, when the county acquires these lands by tax deed on account of delinquent taxes and irrigation district assessments, it takes and holds such title as a trustee. The moneys derived from the sale of such lands are trust funds. The parties and entities interested in that fund are the school districts within the county, the county itself, the state to the extent of the taxes owing to it, the bondholders, and the holders of the debenture certificates. If the lands shall sell for an amount in excess of the taxes and assessments, then after the payment of the general taxes, applying the well established rules of equity, the remainder of the money should be turned over to the irrigation district, provided that sum does not exceed the total amount which would have been assessed against these lands on account of the bonds, had such lands not been transferred by tax deed. Thus the bondholders will have received the full value of all their security."

In arriving at its conclusion in these two cases, the Supreme Court holds the law in effect at the time of execution, sale and delivery of bonds by an irrigation district are considered as a part of the contract, the same as though all of said laws were copied into the bonds, and any subsequent legislation which may impair the obligation of said bond is ineffective as to the bonds.

It is to be noted, in this connection, that when these decisions were rendered, the statute provided a tax deed conveyed to the grantee the absolute title to the lands described therein, as of the date of the expiration of the period for redemption, free and clear of the lien of irrigation district assessments (*State ex rel. City of Great Falls v. Jeffries*, 83 Mont. 111, 116, 270 Pac. 638; Section 2215, Revised Codes of Montana, 1921; Section 2215.9, Revised Codes of Montana, 1935).

However, by the enactment of Chapter 63, Laws of 1937, effective February 25, 1937, it was provided the deed was

issued subject to the lien of irrigation assessments levied against the property payable after the execution of the deed.

While our Supreme Court has not passed upon the question whether the title of the county, a governmental agency, may be affected by subsequent legislation, particularly refusing to do so in *State ex rel. City of Billings v. Osten*, 91 Mont. 76, 5 Pac. (2nd) 562, the general rule is that the relative rights of the parties, having become fixed and vested at the time of the tax sale, cannot be affected by subsequent legislation (61 C. J. 1243); and this office in an opinion heretofore given, relating to the effect of tax deeds on special improvement assessments, has held in harmony with this general rule Opinion No. 391, Vol. 19, Report and Official Opinions of Attorney General.

Applying the principles above set forth to your request, it is the opinion of this office:

1. That in those instances where bonds of an irrigation district were issued prior to March 8, 1927, and tax sale was held prior to February 25, 1937, any amount in excess of taxes and assessments to date of tax deed should be distributed to the irrigation district, providing there are unpaid bonds of the district, the amount to be distributed, however, not to exceed the total amount which would have been assessed against the lands for the payment of said bonds had the lands not been transferred by tax deeds. In other words, for example, if, when the bonds were issued, assessments were spread over a period of twenty years, and at time tax deed was issued, the levy for fifteen years had been made, the district would be entitled to the amount which would have been obtained for the remaining five years, insofar as said excess is sufficient to cover the assessments for the five years. Any sum remaining after distribution of the amount to the district, should be distributed to the general fund of the county.

2. If there are no outstanding bonds, the district is not entitled to any of the excess, and the same should be distributed to the general fund of the county.

3. In those instances where bonds of the irrigation district were issued prior to March 8, 1927, and tax sale was subsequent to February 25, 1937,

the irrigation district would not be entitled to any of said excess, and the excess should be distributed to the general fund of the county.

4. In those instances where bonds of the irrigation district were issued subsequent to March 8, 1927, the irrigation district would not be entitled to any of said excess, and the excess should be distributed to the general fund of the county.

Sincerely yours,  
R. V. BOTTOMLY  
Attorney General