

the action and without paying an attorney's fee to plaintiff's attorney.

July 26, 1943.

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

Dear Mr. Brown:

You have requested my opinion concerning the following facts:

A purchaser of property sold for delinquent taxes brought an action under Section 2215.1, Revised Codes of Montana, 1935, to procure a tax deed. After the action had been filed the former owner attempted to redeem and offered to pay the amount of the delinquent taxes, the interest on the same and the court costs and publication costs. The attorney for the plaintiff demanded, in addition to the costs, amount of delinquent taxes and interest, an attorney's fee in the amount of \$50.00.

It is first important to observe the provisions of Sections 2215.5 and 2215.6, Revised Codes of Montana, 1935.

Section 2215.5 provides in part:

" . . . any defendant to said action may make redemption of said lands from said tax sale by paying the total amount of delinquent taxes and penalties, with interest thereon at eight per centum (8%) per annum from date of payment, which plaintiff shall have paid, together with costs of the action, and upon such payment a certificate of redemption therefrom shall be issued by the county treasurer."

Section 2215.6 provides:

"No judgment in any such action shall be given by default but the court must require proof of the facts alleged in the complaint and other pleadings in said action. The court shall allow the successful party his costs to be fixed by the court including a reasonable attorney's fee in all cases where the county is not the applicant."

The first quoted section contemplates redemption by a defendant before judgment, but after the filing of the complaint. It provides that the plaintiff shall be reimbursed for his costs, but no mention is made of an attorney's fee.

Opinion No. 95.

Taxation, redemption from tax sales— Costs—Attorney's Fee.

Held: The word "costs" as used in Section 2215.5, Revised Codes of Montana, 1935, does not include an attorney's fee and any defendant in an action brought to procure a tax deed under Section 2215.1, Revised Codes of Montana, 1935, may redeem by paying delinquent taxes, penalties, interest and costs of

In 14 American Jurisprudence 38 the text states:

"The term 'costs' or 'expenses' as used in a statute is not understood ordinarily to include attorney's fees."

This is in accord with the holding of our Supreme Court which stated the general rule in regard to costs in *Brunnabend v. Tibbles*, 76 Mont. 288, 246 Pac. 536, in the following language:

"Costs eo nomine were not allowed at common law, and are recoverable only when specifically provided for by statute; the statutes providing therefor must be strictly followed and strictly construed against the party asserting their applicability to his case."

Applying this rule to Section 2215.6, Revised Codes of Montana, 1935, the plaintiff can recover an attorney's fee only after judgment. The section says "successful party" and the plaintiff is not a "successful party" if the action is dismissed. Section 2215.5, Revised Codes of Montana, 1935, provides for dismissal if any defendant redeems by paying delinquent taxes, penalties and costs of the action and does not mention payment of any attorney's fee.

It is therefore my opinion the word "costs" as used in Section 2215.5, Revised Codes of Montana, 1935, does not include an attorney's fee and any defendant in an action brought to procure a tax deed under Section 2215.1, Revised Codes of Montana, 1935, may redeem by paying delinquent taxes, penalties, interest and costs of the action and without paying an attorney's fee to plaintiff's attorney. (See also Opinion No. 122, Volume 15, and Opinion No. 342, Volume 16, Reports and Official Opinions of the Attorney General.)

Sincerely yours,
R. V. BOTTOMLY
Attorney General