

tion. Where a county has erroneously sold land as tax deed property, the purchaser may receive as a refund the full amount paid from the county and the county may receive credit for the amount paid to the state upon the next settlement of the county treasurer with the state as provided in Chapter 201, Laws of 1939.

July 27, 1943.

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

Dear Mr. Brown:

You have asked my opinion concerning the proper procedure for obtaining refunds on over-remittances made by county treasurers to the state of Montana on the proceeds of the sale of county owned tax deed land.

You have also requested my opinion as to the method of obtaining refunds from the state and the method of payment of refunds to the purchasers of land erroneously sold as tax deed property.

I assume from your first question the county treasurer had erroneously paid to the state treasurer more of the proceeds of the sale of tax deed land than he should have, and there is no refund due the purchaser of the land from the county.

This question may be disposed of by reference to two sections of the Constitution of the State of Montana. Section 10 of Article XII provides:

"All taxes levied for state purposes shall be paid into the state treasury, and no money shall be drawn from the treasury but in pursuance of specific appropriations made by law." Section 34 of Article V provides.

"No money shall be paid out of the treasury except upon appropriations made by law, and on warrant drawn by the proper officers in pursuance thereof, except interest on the public debt."

Our court in construing these sections has held that an appropriation by the legislature is necessary in order to draw money from the state treasury and it will be necessary for the counties to receive relief in this manner. In

**Opinion No. 96.**

**Taxes—Tax Deed Land, Refund to purchaser—Counties.**

Held: A county may be refunded money erroneously paid to the state and which money has been deposited in the state treasury only by legislative appropria-

re Pomeroy, 51 Mont. 119, 151 Pac. 333; First National Bank v. Sanders County, 85 Mont. 450, 279 Pac. 247.)

In answering your second question, it is necessary to examine Chapter 201, Laws of 1939. This chapter amended Section 2222, Revised Codes of Montana, 1935, which provided that taxes erroneously or illegally paid may be refunded by order of the board of county commissioners and the state's portion must be refunded to the county by warrant of the state auditor.

Before amendment Section 2222 was held inoperative insofar as it provided that the state auditor must draw his warrant for the state's portion of such taxes because of the lack of a legislative appropriation.

Chapter 201, Laws of 1939, amended Section 2222 and provided the amount due the county for refunds shall be certified to the state auditor and upon each settlement of the county treasurer with the state, credit shall be given the county for the amount certified to the state auditor. This makes the method of refunding to the county a bookkeeping transaction and there is no withdrawal of money from the state treasurer. Such a method was endorsed by our Court in Fitzpatrick v. State Board of Examiners, 105 Mont. 234, 70 Pac. (2nd) 285.

The county should refund the full amount to the purchaser which he paid for land erroneously sold to him as tax deed property. (Christofferson v. Chouteau County, 105 Mont. 577, 74 Pac. (2nd) 427.)

It is therefore my opinion a county may be refunded money erroneously paid to the state and which money has been deposited in the state treasury only by legislative appropriation.

It is also my opinion, where the county has erroneously sold land as tax deed property, the purchaser may receive as a refund the full amount paid by him from the county and the county may receive credit for the amount paid to the state upon the next settlement of the county treasurer with the state, as provided in Chapter 201, Laws of 1939.

Sincerely yours;  
R. V. BOTTOMLY  
Attorney General