

Opinion No. 206.**Tax Deed Land—Lands, Tax Deed—
Transfer of Title—Tax Deed Land.**

Held: Missoula County is correct in retaining in its tax deed accounts the land to which it had taken tax title prior to the enactment of Chapter 223, Laws of 1943, even if some of such tax title land by the provision of said Chapter 223 thereafter was within the confines of Granite County.

September 20, 1946.

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

Dear Mr. Brown:

You have requested an opinion of this office pertaining to the tax deed land accounting in Missoula County. You state that by Chapter 223, Laws of 1943, the legislature changed the boundaries of Missoula and Granite Counties, detaching some land from Missoula County and attaching it to Granite County. Prior to such change of boundary line, Missoula County had taken tax deed to certain lands within said detached area and Missoula County still has such lands in its tax deed accounts.

As you state, Chapter 223, Laws of 1943, makes no provision for transferring any property from Missoula County to Granite County, but merely designates a change of boundary. The tax deed lands of which you speak

were taken, and the land stood of record in the name of Missoula County at the time of the change of boundaries. Missoula County, by taking these tax titles, became the absolute owner of the lands. (See Section 2215, Revised Codes of Montana, 1935.)

Sections 4418, 4419 and 4420, Revised Codes of Montana, 1935, deal with instances where property is detached from an existing county and attached to another existing county. Section 4418 provides for a transcript of all public records pertaining to the detached property being filed in the county to which the territory is attached. Section 4419 provides only the county to which property is attached shall be liable for its just share of liabilities and indebtedness of the county from which the territory was detached shall receive its just share of the credits, which shall be apportioned by ascertaining the ratio the portion detached bears to the territory from which the same was detached. Section 4420 provides such a detachment shall in no way interfere with the collection of taxes. The taxes shall be collected by and the returns made to the county to which said territory is attached.

It is to be noted Sections 4418 and 4419, Revised Codes of Montana, 1935, in no respect provide for the transfer of title to property standing in the name of the county from which the territory is detached to the county to which it is attached. The most these sections provide is for the transportation of public records and for the apportionment of assets and liabilities, the latter provisions being understood in the main as providing a method of determining the respective credit and debit between the counties involved. Section 4420 does not solve the particular question here involved in that it provides only for instances where the taxes have not been collected.

In the instant situation, the county, by foreclosing the tax lien and taking the tax deed, made a collection of the taxes. Our Supreme Court, in the case of *County of Hill v. County of Liberty*, 62 Mont. 15, 203 Pac. 500, held the old county could collect and retain any taxes collected up to and until the transaction between the counties was complete. The Supreme Court of New Mexico, in the case of *Anderson v. Clardy, et al.*, 1 Pac. (2d) 121, had before it a quiet title suit involving

the question of whether a county which acquired legal title to land by tax proceedings prior to the creation of a new county lost such title because the said land was embraced within the new county. The New Mexico Court held that, if the legislature had made no provision for the transfer in the creation of the new county, the old county retained the title to the land.

In view of the law of this state and the cases herein cited, it would appear that—since the legislature overlooked providing an appropriate method of transfer from Missoula County to Granite County—the title to the tax deed land in question should remain of record in the name of Missoula County. The creation of a new county or the changing of boundary lines should have no more effect on the record title of lands held by a county than of those held by private individuals.

It is therefore my opinion under the present law that Missoula County is correct in retaining in its tax deed accounts the land to which it had taken tax title prior to the enactment of Chapter 223, Laws of 1943, even if some of such tax title land by the provision of said Chapter 223 thereafter was within the confines of Granite County. This is a matter that should be called to the attention of the next legislature, so that procedural legislation could be enacted.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General