

Opinion No. 77.

County Treasurers—County Clerks—
State Examiner—Taxation—
Tax Deeds.

Held: Under Section 2204 and Section 2196, Revised Codes of Montana, 1935, as amended, it is mandatory for the county treasurer and county clerk to each keep a book in which shall be kept records concerning tax sale certificates and upon redemption from tax sale the county clerk must make the proper notations required by Section 2205, Revised Codes of Montana, 1935.

The state examiner may prescribe the forms, receipts, certificates and procedure to be used by county clerks and county treasurers in handling all tax sales and tax redemptions and such county officers are compelled to conform therewith.

October 15, 1945.

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

Dear Mr. Brown:

You have requested my opinion concerning the books and records which must, under our law, be kept by county clerks and county treasurers in conjunction with the issuance of tax sale certificates and redemption of property for which tax sale certificates have been issued.

Section 2196, Revised Codes of Montana, 1935, as amended by Chapter 191, Laws of 1939, requires the county treasurer to keep a book in which shall be entered the description of land sold for taxes, date of sale, purchaser's name, amount paid and the number of the certificate of sale.

Section 2204, Revised Codes of Montana, 1935, requires the county clerk to keep a similar book as that required of the treasurer for the entering of the facts relating to the certificate of tax sales.

Certificate of sale are made out in duplicate by the county treasurer and one copy given to the purchaser and the other filed in the office of the county clerk. (Sections 2194 and 2195, Revised Codes of Montana, 1935.)

Upon the redemption of the property the county clerk, under the provisions of Section 2205, Revised Codes of Montana, 1935, must mark the word "redeemed" together with the date and by whom redeemed on the certificate of sale on file in his office and in the margin of his book which he keeps in accordance with the provisions of Section 2204, *supra*.

Section 2215.5, Revised Codes of Montana, 1935, provides that a certificate of redemption shall be issued to a redemptioner who redeems during the pendency of a court action brought for the purpose of securing a tax deed. However, there is no provision for the issuance of a certificate of redemption when redemption is made prior to the issuance of a tax deed which is being applied for by giving notice as provided in Section 2209, Revised Codes of Montana, 1935, and there is no statutory requirement that a certificate of redemption be issued when the county is the holder of the tax sale certificate.

It is the practice for the county treasurers to issue certificates of redemption when the tax sale certificates have been assigned, as the assignees of the certificates have paid the taxes and hold receipts for the money paid. New receipts could not be issued to the redemptioner, but the certificate of redemption is his evidence of the payment.

In your letter, you state that in some counties, certificates of redemption are not issued when the county is the holder of the tax sale certificate, but only delinquent tax receipts are issued and

no record is made of redemption by either the treasurer or county clerk. Section 2205, Revised Codes of Montana, 1935, as noted above, requires the county clerk to make a record of the redemption. I believe it would be within your power to require the county treasurer to likewise make appropriate entries in his records, and to issue duplicate receipts or duplicate copies of the certificate of redemption which should be transmitted to the county clerk for his records and so the clerk may properly keep his books.

The power of the state examiner in fixing the accounting procedure of counties is broad as Section 210, Revised Codes of Montana, 1935, provides in part as follows:

"The duties of the state examiner and his assistants are: . . .

"To prescribe the general methods and details of accounting for the receipt and disbursement of all moneys belonging to the counties, cities, towns, or school districts, and the educational, charitable, penal, and reformatory institutions of the state of Montana, and to establish in all such offices such general methods and details of accounting as are required by law or are prescribed by the state examiner, and all county, city, town or school district officers, and officers of educational, charitable, penal and reformatory institutions of the state of Montana are hereby compelled to conform therewith . . ."

The use of the phrase "to establish in all such offices such general methods and details of accounting as are required by law or are prescribed by the state examiner" evidences the intent of the legislature to grant to the state examiner the authority to prescribe the forms to be used in the handling of all delinquent taxes and the receipts to be given by the treasurer when delinquent taxes are paid. A certificate of redemption is in part a receipt for the payment of taxes and if in your judgment the issuance of a certificate of redemption by the treasurer when the county holds the certificate of sale would be the best business practice, it is your duty and within your authority under the statute to require the same.

Uniformity throughout the state in the accounting methods of the clerks

and treasurers could be achieved if you prepared a set of forms in the handling of delinquent tax matters for the use of the above officials.

My view in the matter is not without precedent as Opinion No. 150, Volume 18, Report and Official Opinions of the Attorney General, held:

“The state examiner under Section 210, Revised Codes of Montana, 1935, has power to prescribe a delinquent tax record for the counties and should he do so the counties are compelled to conform therewith.”
It is my opinion:

1. Under Section 2204, and Section 2196, Revised Codes of Montana, 1935, as amended, it is mandatory for the county treasurer and county clerk to each keep a book in which shall be kept records concerning tax sale certificates and upon redemption from tax sale the county clerk must make the proper notations required by Section 2205, Revised Codes of Montana, 1935.

2. The legislature, under the above quoted statute, has placed the duty upon the state examiner to prescribe the forms, receipts, certificates and procedure to be used by county clerks and county treasurers in handling all tax sales and tax redemptions and said statute makes it mandatory upon such county officers to conform therewith.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General