

Opinion No. 31

**Funds, Disbursements of—Irrigation
District Leases, Funds From**

**Held: That distribution of moneys
received upon leases in the
Red Lodge-Rosebud Irrigation
District should be accordance
with Chapter 81, Laws of 1943.**

May 1, 1947

Mr. H. A. Simmons, Jr.
County Attorney
Carbon County
Red Lodge, Montana

Dear Mr. Simmons:

You have requested my opinion on
the following question:

“In what fund or funds should
moneys received upon leases in the
Red Lodge-Rosebud Irrigation Dis-
trict be disbursed?”

The same irrigation district, and
presumably the same facts are in-
volved here as were involved in Opin-
ion No. 169, Volume 20, Report and
Official Opinions of the Attorney Gen-
eral, page 213. The county procured
tax deed to these lands in 1932. In
your request you state the land in
question was offered for sale in Mon-

tana and there were no bidders, nor have there been subsequent sales on most of the land. The county has leased it under Chapter 171, Laws of 1941, and amendments thereto.

Provision for the disposition of money received from rentals of tax deed land is made in Chapter 81, Laws of 1943, which amends Section 6, Chapter 171, Laws of 1941. Chapter 81, Laws of 1943, provides, in part:

"The proceeds of every such sale or lease shall be paid over to the county treasurer who shall apportion and distribute the same in the following manner: (a) Upon a lease of the property the amount received as rent, royalty, or otherwise, including interest received on the payments under either a sale or

lease shall be apportioned as provided in subdivision (d) hereof and shall be credited as earnings of tax deed property and not considered as a credit to tax deed accrued accounts, as in the case of the principal received from sales of tax deed lands. * * * "(d) Upon such sale if there shall be any amount remaining of such proceeds after the payment of the amount specified in subdivision (b) hereof and such remainder is less in amount than the aggregate amount of all taxes and assessments accrued against such property for all funds and purposes, without penalty or interest, such proceeds shall be prorated between such funds and purposes in the proportion that the amount of taxes and assessments accrued against such property for each such fund or purpose bears to the aggregate amount of taxes and assessments accrued against such property for all funds and purposes."

The above chapter, insofar as it applies to disposition of rentals from tax deed lands is in conflict with Section 2208.2, Revised Codes of Montana, 1935. This conflict arises from the manner of disposition of the proceeds of leases after those proceeds have been paid over to the county. Section 2208.2 provides as follows:

"All moneys received from the

sale or leasing of any such lands, or of any lands received in exchange, shall be paid into the county treasury and shall be credited to each fund as the same would have been credited had the moneys so received been paid as taxes upon said land acquired by the county by tax deed, or upon the lands exchanged, and any surplus after paying all taxes with interest and penalties shall belong to the county."

The above section directs that rental and sale proceeds be distributed in the same manner, viz., "... credited to each fund as the same would have been credited had the moneys so received been paid as taxes upon said land acquired by the county by tax deed. . . ."

Chapter 81, Laws of 1943, set out above, was subsequently enacted as an amendment to section 6 of Chapter 171, Laws of 1941. It provides specifically for distribution of funds from leases as follows:

"Upon a lease of the property the amount received as rent . . . shall be apportioned as provided in subdivision (d) hereof and shall be credited as earnings of tax deed property and not considered as a credit to tax deed accrued accounts as in the case of the principal received from sales of tax deed lands." (Emphasis mine)

Both Section 2208.2 and Chapter 81, Laws of 1943, are designed in part to dispose of the proceeds from land taken for taxes and leased by the county. But the two acts conflict as to the manner of disposing of the proceeds. Section 2208.2 disposes of the moneys from rentals and sales of land taken for taxes in the same manner as taxes. However, Chapter 81, Laws of 1943, provides that the moneys from leases be disposed of as earnings, and the moneys from sales be handled as taxes. Although the county receives all the moneys under both sections, the method of accounting procedure is changed in Chapter 81, Laws of 1943. Since Chapter 81, Laws of 1943, is the later statute, it must repeal by implication Section 2208.2 insofar as disposition of funds received from leases is concerned.

The principle of repeal by implication stated in *Box v Duncan*, 98 Mont. 216, 220, 38 Pac. (2d) 986, is applicable:

"Repeal of a statute by implication is not favored by the courts . . .

"To make tenable the claim that an earlier statute was repealed by a later one, the two Acts must be plainly and irreconcilably repugnant to, or in conflict with, each other; must relate to the same subject; and must have the same object in view." (Citing Cases).

It is, therefore, my opinion that distribution of moneys received upon leases in the Red Lodge-Rosebud Irrigation District should be in accordance with Chapter 81, Laws of 1943.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General