

Opinion No. 102**Taxation—County Treasurer—County Assessor**

Held: 1. The County Treasurer is charged with the duty of levying upon and taking into his possession such personal property upon which taxes are delinquent when such taxes are not a lien upon real property sufficient to secure the payment of such taxes. The Treasurer may not levy upon and sell for delinquent personal property taxes any personal property except that upon which the taxes were assessed.

March 28th, 1950.

Mr. Roy W. Holmes
County Attorney
Carter County
Ekalaka, Montana

Dear Mr. Holmes:

You have requested my opinion concerning the matter of enforcing the collection of delinquent taxes on personal property where its owner did not, at the time of assessment, own real property or own sufficient real property to secure payment of the tax. You state the factual situation as follows:

"The Treasurer has allowed a number of persons owning personal property to become delinquent in payment of the taxes upon such personal property. (In all cases the taxes due upon such personal property was not and is not now a lien upon real property.) In some cases the delinquent taxes go back to the years 1940 and 1941.

"The Treasurer now wishes to go about collecting these delinquent personal property taxes."

You infer that the particular property assessed may have disappeared or been disposed of in some instances without payment of the tax thereon, but that the delinquent may now possess other or after-acquired personal property.

You inquire, in substance, if the County Treasurer may levy upon and sell such after-acquired property in liquidation of delinquent taxes for which other personal property was assessed, or if levy and sale is restricted to the particular personal property that was assessed for the tax remaining unpaid.

Upon this matter you are advised as follows:

Sections 2238 and 2239, Revised Codes of Montana, 1935, as amended (Secs. 84-4201 and 4202, Revised Codes of Montana, 1947), are special statutes governing taxation of personal property where the tax thereon is not a lien on real property. The former Section pertains to duties of the County Assessor. Upon discovery of any such property he is required to make report thereof immediately to the County Treasurer, and in any event within five days thereafter. The latter Section pertains to duties of the County Treasurer, part thereof are as follows:

"The County Treasurer must at the time of receiving the assessor's report, and in any event within thirty days from the receipt of such report, levy upon and take into his possession such personal property against which a tax is assessed and proceed to sell the same."

It is apparent the legislature was cognizant of the ease with which such property could escape tax payment by the mere expedient of removing the property from the taxing jurisdiction. Therefore, those special provisions were enacted requiring speedy performance on the part of both the Assessor and County Treasurer, with a severe penalty for the County Treasurer for neglect of duty, to-wit:

"The County Treasurer and his sureties are liable on his official bond for all taxes on personal property remaining uncollected by reason of the wilful failure and neglect of such Treasurer to levy upon and sell such personal property for the taxes levied thereon."

When the County Treasurer performs his duties and levies upon such property within the time required by law, the identity of the particular personal property assessed is seldom in doubt.

It is provided in Sec. 2152, Revised Codes of Montana, 1935 (Sec. 84-3807, Revised Codes of Montana, 1947), as follows:

"Every lien created by this title has the force and effect of an execution duly levied against all personal property of the delinquent. The judgment is not satisfied nor the lien removed until the taxes are paid or the property sold for the payment thereof."

With respect to said Section, our Supreme Court in *Swingley v. Reichoff*, 112 Mont. 59, 68, 112 Pac. (2d) (1075), said:

"The presumption is based upon the following authorities: The government's lien for taxes is based upon express statutory provision, and is a perpetual lien against which no statute of limitations can successfully be interposed. (Secs. 2152 and 2154, Rev. Codes.) . . . A perpetual lien, of course, presupposes a continuance of the obligation of a property owner to pay the tax or otherwise satisfy the lien without reference to the lapse of time."

While that was an action to quiet title and involved the question of subrogation, it is in point with respect to the lien being perpetual.

The priority of the tax lien is expressly provided by Section 2153, Revised Codes of Montana, 1935, as amended by Chapter 97, Laws of 1937 (Sec. 84-3808, Revised Codes of Montana, 1947), to-wit:

“(a) Every tax due upon personal property is a prior lien upon any or all of such property, which lien shall have precedence over any other lien, claim or demand upon such property. . . .”

The Hon. Harrison J. Freebourn, then Attorney General of Montana, on September 9, 1940, issued his Opinion No. 256, reported in Volume 18, Opinions of the Attorney General, page 256, with respect to such lien. He held such lien to extend to each particular item for the entire tax on all the property assessed therefor, and that the lien is not lost through sale of the property to a third person by the owner.

From the foregoing three things are made apparent, to-wit:

(1) The tax lien is upon the **particular property assessed** for the tax of that particular year; and if the tax is not paid the lien for that tax does not attach to other or after-acquired personal property.

(2) The tax lien is perpetual until the tax is paid or the property sold in payment of the tax; and,

(3) The lien is not lost by sale of the property, by the owner, to a third person. Such personal property as remains in the County and can be identified may be levied on by the County Treasurer and sold for such taxes.

For those reasons I concur in your views that the County Treasurer may not levy upon and sell after-acquired personal property to liquidate a tax for which other personal property was assessed.

However, if the owner has removed from the County where the property was assessed without payment of the tax, the County Treasurer may bring an action in the name of the assessing County against the owner to collect the tax. Sec. 2226, Revised Codes of Montana, 1935 (Sec. 84-4181, Revised Codes of Montana, 1947).

Very truly yours,
ARNOLD H. OLSEN,
Attorney General.