

Opinion No. 110

Taxation — County Treasurer — Deeds — Tax Deeds — Tax Sales—
Section 84-4169, Revised Codes of Montana, 1947.

Held: Where a delinquent tax sale certificate is sold and assigned by the county and the purchaser institutes an action to obtain a tax deed and a decree granting the tax deed is issued, a certified copy of the decree granting the deed should be delivered to the County Treasurer. The certified copy of the decree granting the deed substitutes for the tax sale certificate and the tax receipts in the office of the County Treasurer. The County Treasurer should note the issuance of the tax deed on his records, but no specific form for this entry is required.

May 18th, 1950.

Mr. George D. Ore
County Attorney
Petroleum County
Winnett, Montana

Dear Mr. Ore:

We have your request of April 26th for an opinion as to how the County Treasurer can clear the tax lien record upon issuance of tax deed pursuant to court order, the factual situation being substantially as follows:

The county held a tax sale certificate on real property sold for delinquent taxes, and duly assigned the same to John Brown. Thereafter he instituted an action in the District Court for purpose of obtaining a tax deed to the property in question. Upon hearing of said action the assignment of the tax sale certificate to Brown and his tax receipts were introduced in evidence and became part of the permanent records for the court. A decree was issued by the court directing the County Treasurer to issue a tax deed to Brown for said property, and thereupon the tax deed was issued to him.

With respect to your inquiries, they are about as follows:

1st: Under such facts and circumstances, what kind of an entry, and on what authority, does the County Treasurer clear the lien record in his office with respect to such property?

2nd: Or is the tax lien cleared by the sale of the tax sale certificate?

As suggested in your letter, upon issuance of a valid tax deed, a new title is created from the sovereignty, and all former titles and liens not expressly exempt therefrom are extinguished.

The law thereon is stated as follows in *Rist v. Toole County*, 117 Mont. 426, 442:

"A tax deed is not derivative but 'creates a new title in the nature of an independent grant from the sovereignty, **extinguishing all former titles and liens not expressly exempted from its operation.**' Sec. 2215, Revised Codes; *State ex rel. City of Great Falls v. Jeffries*, 83 Mont. 111, 270 Pac. 638, 640; *Richardson v. Lloyd*, 90 Mont. 127, 300 Pac. 254. It therefore **strikes down, not only the former owner's fee title, but all encumbrances and incidents thereof . . .**" (Emphasis added).

Therefore no lien remains for the taxes on the land for which the tax deed was issued. Both the court decree and the tax deed are evidence thereof.

Upon issuance of the court decree a certified copy thereof is delivered to the County Treasurer, which decree directs him to issue the tax deed therein concerned. The certified copy of the decree becomes a permanent public record in the County Treasurer's office. The tax deed, pursuant to Section 84-4169, R. C. M., 1947, recites in part that:

"a certified copy thereof being filed in my office, I, the said County Treasurer aforesaid, am ordered and directed to issue this deed of conveyance for said lands."

That decree and order of court, copy of which is in the hands of the County Treasurer, is in effect a substitute for the certificate of assignment and the tax receipts, and serve the same purpose. It gives the County Treasurer as much authority for making proper entries upon the records of his office as would the certificate and tax receipts themselves.

There appears to be no statutory form for making an entry in the County Treasurer's records that a tax lien upon certain property has been eliminated by issuance of a tax deed thereon, so that any appropriate reference entered would suffice, such as "Tax Deed issued April 10, 1950, by order of Court."

As already stated herein, it is the tax deed that effects a dissolution of the tax lien which is merged in the deed. The lien exists from the time the property is sold for delinquent taxes until they are paid, or until the tax deed is issued, whether the certificate of sale is held by the county or by an individual. The assignment merely transfers the lien and the rights of the county to the assignee. As bearing thereon see the following statutes: 84-3807, 84-3809, 84-4124, 84-4131, 84-4132, 84-4138, 84-4151 and 84-4162, Revised Codes of Montana, 1947.

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