

Opinion No. 114

**Assessment—Taxation—Voters—Bond Elections—County Assessors—
Real Property—Equitable Conversion—Elections—Contracts.**

Held: The purchaser of real property under an executory contract of sale is the "owner" of the property. Such purchaser is entitled

to have his name placed on the County assessment rolls where he is in fact paying the taxes on the property. Where the name of the purchaser of real property under an executory contract of sale appears on the assessment roll of the County Assessor, even though not listed as the owner of property, but who is in fact the "owner" of property, and who actually pays the taxes on property is a taxpayer and his name should be placed on the poll book of the County and he is entitled to vote in County Bond Elections, if he is otherwise a qualified elector.

June 13, 1950.

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

Dear Mr. Holmes:

By a letter of May 8th, 1950, you requested my opinion on the following question:

Mary Doe entered into a contract to purchase certain real estate from Richard Roe. The contract provides that Mary Doe is to pay for the real estate in installments over a period of years and that during this period of years she is to pay the taxes on the property. Mary Doe has been complying with the terms of the contract. The property has been assessed by the County Assessor to Richard Doe, c/o Mary Doe." Mary Doe is a qualified and registered elector of the County. The County Clerk has refused to list Mary Doe's name on the County poll book so as to entitle her to vote in the County bond elections, on the ground that Mary Doe's name does not appear on the last assessment roll as a tax payer as required by Section 16-2026, Revised Codes of Montana, 1947. Mary Doe insists that she is a taxpayer and should be allowed to vote in the County Bond Elections. Is she entitled to vote?

Section 16-2026, Revised Codes of Montana, 1947, provides:

"In all County Bond Elections hereafter held only qualified registered electors residing within the County, who are taxpayers upon property therein and whose names appear upon the last completed assessment roll for State, County and school district taxes, shall have the right to vote. Upon the adoption of the resolution calling for the election, the County Clerk must cause to be published in the official newspaper of the County a notice, signed by him, stating that registration for such bond election will close at noon on the fifteenth day prior to the date for holding such election and at that time the registration books should be closed for such election. Such notice must be published at least ten (10) days prior to the day when such registration books will be closed.

After the closing of the registration books for such election the County Clerk shall promptly prepare lists of the registered electors of such voting precinct, who are taxpayers upon property within the County and whose names appear on the last completed assessment roll for State, County and school district taxes, and who are entitled to vote at such election, and shall prepare poll books for such election as provided in Section 23-515, and deliver the same to the judges of election prior to the opening of the polls. It shall not be necessary to publish or post such list of qualified electors."

Section 84-406, Revised Codes of Montana, 1947, provides:

"(1) The assessor must, between the first Monday of March and the second Monday of July in each year, ascertain the names of all taxable inhabitants, and assess all property in his County subject to taxation, except such as is required to be assessed by the State Board of Equalization, and must assess such property to the persons by whom it was owned or claimed, or in whose possession or control it was at twelve o'clock M. of the first Monday of March next preceding, except that such procedure shall not apply to motor vehicles which shall be assessed at the time fixed in (2) hereof; but no mistake in the name of the owner or supposed owner of real property renders the assessment thereof invalid. Credits must be assessed as provided in section 84-101, subdivision 6.

"(2) The assessor must ascertain and assess all motor vehicles in his County subject to taxation as of January 1st in each year, and the same shall be assessed to the persons by whom owned or claimed, or in whose possession or control such vehicle was at twelve o'clock M of the first day of January in each year. Nothing herein contained shall relieve the applicant for registration or re-registration of any motor vehicle so assessed or subject to assessment of the duty of paying taxes thereon as a condition precedent to registration or re-registration in the event said taxes have not been paid by any prior applicant or owner in all cases where required to be paid."

Section 84-508, Revised Codes of Montana, 1947, provides:

"Lands once described on the assessment book need not be described a second time, but any person claiming the same, and desiring to be assessed therefore, may have his name inserted with that of the person to whom such land is assessed."

Section 84-406, Revised Codes of Montana, provides that the property shall be assessed to the taxable inhabitant "by whom it is owned or claimed, or in whose possession or control it was at twelve o'clock M. of the first Monday of March, etc." If Mary Doe is the owner of the property at twelve o'clock M. on the first Monday of March, she is entitled to have her name placed on the assessment roll of the County, under the provisions of Sections 84-406 or 84-508, Revised Codes of Montana, 1947.

The Supreme Court of Montana has on numerous occasions decided that the vendee named in an executory contract to purchase real estate is the "owner" within the meaning of the word as used in various statutes in the Montana Codes. In *Missoula Mercantile Company v. O'Donnell*, (1900), 24 Mont. 65, 60 Pac. 991, the court stated:

"It is true that under the facts set forth in the complaint and as shown by the proof they (two vendors of the real estate involved) held the record title to the lots; the former at the time the building was commenced, and the latter when the work upon the building was abandoned and the claim was filed. Under her contract for the purchase of the lots, Mary O'Donnell's rights were to be forfeited upon her failure to meet her engagements; but so long as she complied with her contract with the corporations they had no interest at all, except incidentally in the enhancement of their security by the erection of the building."

In *Callender v. Crossfield Oil Syndicate*, (1929) 84 Mont. 263, 275 Pac. 273, the court had occasion to consider the meaning of the word owner as used in Section 8375, Revised Codes of Montana, 1921 (Section 45-1001, Revised Codes of Montana, 1947), and it held:

"The word 'owner' as used in statutes of the character of Section 8375 (lien for labor and materials furnished for use of oil and gas wells or pipe lines) ordinarily means one who has an estate in the property which may be assigned, transferred, or conveyed. . . We think this is the meaning to be given the word "owner" as used in this section, rather than the restrictive meaning contended for by defendant. Only the equitable interest of the syndicate was subject to the liens, and they did not affect defendant's legal title."

In *State et al. v. Bradshaw Land and Livestock Company*, (1935) 99 Mont. 95, 43 Pac. (2d) 674, the court again had occasion to consider the problem and again held that the purchaser of land under an executory contract was the owner of the real estate from the effective date of the contract.

In the *First State Bank of Thompson Falls v. United States* (1937) 92 Fed. (2d) 132, the United States Circuit Court of Appeals of the Ninth Circuit was called upon to construe the meaning of the word "owner" as used in Section 2778.2, Revised Codes of Montana, 1935, which statute has now been repealed, the court held:

"Under the contract the vendor (defendant) was to retain title until the full amount of the purchase price was paid. That the vendee, Mrs. Christie, was entitled to possession of the premises during the term of the contract is shown by the provision of the contract . . . Under the doctrine of equitable conversion a contract of purchase and sale of real estate vests the entire beneficial interest in the land in the vendee during the life of the contract. The vendor retains legal title only as security for the purchase price.

The vendee's interest is a legal interest, whereas the vendors is held to be a personal property interest in the purchase price. That this is the law of Montana as well as the law generally is shown by the case of *Kern v. Robertson*, 92 Mont. 283, 12 Pac. (2d) 565."

A further question may arise, that is, even though the vendee under an executory contract for the sale of property is deemed to be the owner from the effective date of the contract for said purposes as shown by the definitions above cited, is such a vendee the owner for taxation purposes? In Volume 2, *Cooley on Taxation*, 4th Edition, Section 603, it is stated:

"The duty to pay taxes as between vendor and vendee may be regulated by contract, so far as ultimate liability therefor as between the parties is concerned, but this does not necessarily affect the primary liability to the State. The Legislature may authorize the assessment either to the vendor as legal owner or to a purchaser in possession; and when a purchaser is to be deemed the owner for the purposes of taxation is sometimes dependent upon the terms of the tax statute. As between the vendor and vendee, independent of statute, real estate is ordinarily taxable to the vendor where the sale is conditional, or the vendor retains possession, or a life estate is reserved to the vendor; but if the vendee has gone into possession under an executory contract of sale it is ordinarily taxable to the vendee as owner. However, the purchaser of realty, although only part of the price is paid and the seller is to retain possession for a time, is taxable where a statute provides that the holder of the equitable title, whether or not in possession shall pay the taxes."

Hall v. Denckla
28 Ark. 26

Morgan v. Burks
90 Ga. 287, 15 S.E. 821

Hunt v. Rowland
22 Iowa 53

Thompson v. Noble
108 Mich. 26, 65 N.W. 746

Anderson v. Harwood
47 Mo. App. 660

Bowls v. Oklahoma City
24 Okla. 579, 104 Pac. 902, 24 L.R.A. (N.S.)

Harvey v. Provident Investment Co.
156 S.W. 1127 (Texas)

Boggess v. Scott
48 W. Va. 316, 37 S.E. 661

See also 61 C. J., *Taxation*, Section 187

Chapter 93 of the Laws of Montana of 1917 provides that the question of taxation for school purposes in excess of the ten mill levy should be submitted "to the legal voters of said district who are tax paying freeholders therein."

The Attorney General of Montana, in an opinion to be found in Volume 8 of the Opinions of the Attorney General, page 487, held that the purchaser of land under a contract, providing that the title does not vest until the payments are completed, was a tax paying freeholder within the meaning of this statute, so as to entitle such purchaser to vote in the school tax elections, if he is otherwise a qualified elector.

Statutes requiring persons to be taxpayers in order to entitle them to vote at various bond elections have received a most liberal interpretation in Montana. 20 Opinions of the Attorney General 52.

It is therefore my opinion that Mary Doe is a taxable owner of property within the meaning of Section 84-406, Revised Codes of Montana, 1947, and her name should appear on the assessment rolls as a taxpayer, liable for the taxes on the property which she has contracted to purchase. She is entitled to have her name placed on the assessment rolls under the provisions of Section 84-508, Revised Codes of Montana, 1947, as the owner of the property. Inasmuch as her name does in fact appear on the assessment roll, "Richard Roe, c/o Mary Doe", and since she does in fact pay the taxes on the property, and further since she is the owner of the property, she should be entitled to vote in the County bond election.

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