

Opinion No. 111.**Tax Deed Lands—Municipalities, Tax
Liens on Lands of.**

HELD: Land owned by a municipality may not be sold for non-payment of taxes which were assessed before the municipality acquired the land.

December 28, 1954.

Mr. Frank Hooks
County Attorney
Broadwater County
Townsend, Montana

Dear Mr. Hooks:

You have requested my opinion upon the following question:

“May a parcel of land now owned by a municipality be sold for non-payment of taxes which were assessed before the municipality acquired the land?”

It is settled law in this state that the property of the state and its subdivisions may not be taxed; no taxes can be assessed against property owned by a municipality, and the question of sale for tax delinquency will not, under ordinary circumstances, arise. Article XII, Sec. 2 of the Montana Constitution provides in part that:

“The property of the United States, the state, counties, cities, towns, school districts, municipal corporations and public libraries shall be exempt from taxation . . .”

This same principle is set forth in almost identical terms in Section 84-202, R.C.M., 1947.

This question, however, concerns property which was subject to a lien, for non-payment of taxes, at the time that it came into the possession of the municipality. It is therefore necessary to determine whether acquisition by the municipality extinguishes a prior

existing lien. The general rule is that it does. In 51 Am. Jur., Taxation, Sec. 1024, this rule is stated as follows:

“ . . . In the case, however, of the state or of a municipal or other public corporation whose exemption from taxation, although often expressly granted by statute, ordinarily exists in the absence of statute upon grounds of public policy, the general rule is that land which it acquires cannot be sold for the nonpayment of taxes assessed thereon prior to the acquisition of the land . . . ”

This is the rule in all American jurisdictions, with the exception of the State of Michigan. (See cases collected in the annotations in 2 A.L.R. 1535, and 30 A.L.R. 413.)

This question was before the Montana Supreme Court in the case of *Housing Authority v. Bjork*, 109 Mont. 552, 98 Pac. (2d) 324. The Housing Authority of the City of Butte had acquired a parcel of land by eminent domain proceedings. The amount paid by the Housing Authority upon the eminent domain award was not sufficient to reimburse the county for all delinquent taxes, and the county attempted to sell the land for the remainder of the taxes. The Supreme Court ruled that:

“ . . . Where land is taken under eminent domain by a municipality or a like entity, a lien for taxes is extinguished . . . ”

There is no distinction to be made for this purpose between land acquired by eminent domain and land acquired in any other manner. The rule is applicable to all.

It is therefore my opinion that land owned by a municipality may not be sold for non-payment of taxes which were assessed before the municipality acquired the land.