

chaser, may one of several co-tenants redeem his proportionate interest in the property by payment of a proportionate share of the delinquent tax, penalty and interest?"

There are actually two separate questions involved in this problem. First, may an owner of an undivided interest in real property which has been sold for taxes redeem that undivided share, so that he remains owner of an undivided interest in co-tenancy with the purchaser at the tax sale? Second, may he redeem a part of the whole tract of land, thereby becoming sole owner of a particular portion of the tract which was formerly held by himself and others in co-tenancy?

It is the general rule of law that, in the absence of a specific statute allowing it, an undivided interest may not be redeemed by one co-tenant by paying his proportionate share of the delinquent taxes, penalties and interest. (*People v. McEwen*, 23 Cal. 54; *Rich v. Palmer*, 6 Ore. 339; 61 C. J. Taxation §1764, p. 1278; 51 Am. Jur. §1102, p. 957, Annotation, 145 A. L. R. 1328.) The co-tenant must ordinarily redeem the entire parcel, and look to the other co-tenants for restitution of their share of the taxes.

The right to redeem property from tax sale is wholly statutory, and, while these statutes are to be liberally construed, the person seeking to redeem must bring himself within their provisions. (*State ex rel. Federal Land Bank v. Hays*, 86 Mont. 58, 282 Pac. 32.)

A great many cases exist in which redemption of an undivided interest has been allowed; however, in every case found it has been authorized by a statutory provision, specifically naming holders of undivided interests as persons who will be allowed to redeem. A typical statute is that of Colorado which provides in part that redemption may be had by, "Any person who has or claims an estate in, or a lien upon, any undivided estate, or interest in any piece of land sold for taxes . . ." (*See Hallett v. Alexander*, 50 Colo. 37, 114 Pac. 490; *Wade v. Drexel*, 60 Minn. 164, 62 N. W. 261; *Holbrook v. Treasurer*, 8 Mich. 14.)

#### Opinion No. 53.

#### Taxation—Redemption From Tax Sale—Redemption of Undivided Interests—Piecemeal Redemption.

HELD: 1. One of two or more co-tenants may not redeem his undivided interest which has been sold at a tax sale, by paying his proportionate share of the delinquent taxes, penalties and interest.

2. One of two or more co-tenants may, under the provisions of Section 84-4155, R. C. M., 1947, redeem a parcel of land which has been assessed and sold as part of a larger tract; but the redeeming co-tenant does not thereby acquire any better right or title than he had previous to the tax sale—he remains a co-tenant with the same interest in the portion redeemed which he had in the whole tract before the sale.

January 22, 1954.

Mr. Edward J. Ober, Jr.  
County Attorney  
Hill County  
Havre, Montana

Dear Mr. Ober:

You have asked my opinion upon the following question:

"When real property has been sold for non-payment of taxes, and struck off to the county for lack of a pur-

It has been held in two previous Attorney General's opinions in this state that redemption of an undivided interest is not possible under Montana statutes. (13 Opinions of Attorney General, 97; 16 Opinions of Attorney General 147, No. 149.) There is no specific provision for the redemption of an undivided interest, and, under the general rule applicable to the situation, the owner of an undivided interest in real property may not redeem his undivided interest, and become a co-tenant with the purchaser at the tax sale.

There remains the question whether a partial redemption under Section 84-4155, R. C. M., 1947, may be permitted to the holder of an undivided interest, and more particularly, if permitted, can Section 84-4155, supra, be so construed as to permit one of several co-tenants to redeem a portion of the property, so that he becomes the sole owner of the redeemed portion. Section 84-4155, supra, is as follows:

"Piecemeal Redemption of Land Sold for Taxes. Whenever any person, firm, co-partnership, corporation or association shall desire to redeem from a tax sale and pay all subsequent taxes upon any lots, piece or parcel of real estate, which said person, firm, co-partnership, corporation or association shall own or hold a mortgage or other lien against or when such person, firm, co-partnership, corporation or association shall be the owner of or have some interest in such property, it shall be the duty of the county treasurer of the county in which such real estate is situated to permit such redemption and payment; and in case the said real estate shall have been assessed and sold, together with other real estate, or in case the tax assessed against any other property shall be a lien thereon, then it shall be the duty of said county treasurer to compute and apportion the tax that should have properly been assessed against the said real estate sought to be redeemed, and upon which the taxes are sought to be paid, the same as if said property had been separately assessed. Any personal property tax which is a lien upon said real estate shall be likewise computed and apportioned on the same percentage basis as the tax as-

essed against the real estate is apportioned."

It was stated in 19 Opinions of Attorney General 360, No. 230, that redemption of an undivided interest is permissible under this statute, but it is not clear whether it was intended to mean that the redeeming co-tenant thereafter held the property in severalty, free of all claims of the other co-tenants.

Section 84-4155, supra, as originally enacted in 1915 (Ch. 91, Laws of 1915) gave a right to any person or corporation who was the owner or holder of a mortgage or lien on the property to piecemeal redemption. In 1941 (Ch. 17, Laws of 1941) the statute was broadened to include anyone who "shall be the owner of or have some interest in" the property. It was upon this change that the opinion above cited (19 Opinions of Attorney General 360, No. 230) was based. This statute created no new rights, but only permitted the existing rights to be exercised by anyone who had any interest in the property. The nature of that right was construed by the Montana Court in the case of *Federal Land Bank v. Hays*, supra, where a mortgagee sued to compel the county treasurer to accept payment of part of the amount of the delinquent taxes, to redeem one forty acre tract which had been assessed as part of a larger tract. The court held there that the mortgagee was correct, and should be allowed to redeem part of the tract. However, it was recognized in that case that the mortgagee would not acquire, and was not attempting to acquire, any new interest in the part of the property redeemed by the redemption. He merely preserved his lien and his right to foreclose, exactly as they had stood prior to the tax sale.

This is the general rule on the subject of redemption. It is stated by Cooley on Taxation, 4th Ed. §1557, p. 3106, as follows:

"Redemption gives no new title; it simply relieves the land from the sale which has been made . . . This principle is one of importance not only as between the party redeeming and the purchaser, but also as between the former and any third party who

may have an interest in the land that would be so affected by the tax purchase. As has been seen, it may often happen that one to redeem his own interest is compelled to redeem for others also, and it may seem reasonable to him that under such circumstances he should acquire the title. But the law which gives him a privilege of redemption will not suffer him to convert it into a privilege of purchase; and whatever form the transaction may assume as between him and the tax purchaser, the law will hold it to be in fact a redemption."

In the case of *Young v. Zahner*, 162 Pa. St. 468, 29 Atl. 778, a widely quoted Pennsylvania case, the holder of the reversionary interest in property redeemed it after a tax sale, and then sued the life tenant in ejectment. The court held that the revisioner did not acquire the life estate through the redemption and said:

"As the sale cut off both the life estate and freehold, or might have done so, it is argued that the redemption carried both estates to the guardian when he paid the redemption money. This is a mistake. Redemption operated to set aside or annul the sale, and left the title precisely as though the sale had not been made." (Emphasis supplied.)

This same proposition was stated in the very recent case of *Housing Authority v. Breen*. 10 So. (2d) 395:

"No one will seriously contend that a redemption of a tax sale of real estate creates a new title or is sufficient to operate a transfer of the property to any extent. It simply effaces the tax sale and restores the title to the status existing prior to such sale." (Emphasis supplied.)

See also the late case of *Mabrey v. Millman*, 208 Ark. 289, 186 S. W. (2d) 28.

The practicality of the rule in this situation is evident. To permit one of several co-tenants to redeem a portion of the land held in co-tenancy upon his own behalf, and thereby vest full and complete title in himself to that portion, would have the effect of a parti-

tion and termination of a co-tenancy without any judicial proceeding. In addition to vesting judicial duties in the county treasurer, such an interpretation would cause serious difficulties in land titles and do away with the protections accorded the rights of all other parties by our partition statutes. (Secs. 93-6301 to 93-6360, R. C. M., 1947.)

There is nothing in Section 84-4155, supra, to indicate that such a serious and fundamental change in our law is contemplated. That section, by its terms, merely gives the owner, lienholder, or possessor of an interest in the property, the right to redeem a portion of the land from tax sale, and place that part of the land in the same status, as though the tax sale had never been made. A co-tenant may redeem a part of the land, but he remains a co-tenant in the part redeemed, with the same proportionate interest which he formerly had in the entire tract.

It is therefore my opinion that a co-tenant may not redeem his undivided interest in land which has been sold at a tax sale, by paying his proportionate share of the delinquent taxes, penalties and interest.

It is also my opinion that a co-tenant may redeem a parcel of land which has been assessed and sold as part of a larger tract; but the redeeming co-tenant does not thereby acquire any better right or title than he had previous to the tax sale—he remains a co-tenant with the same interest in the portion redeemed which he had in the whole tract before the sale.