

lost tax sale certificate, and the person entitled to payment.

2. No claim need be made to, nor approved by, the Board of County Commissioners for payment of redemption monies by the party entitled to the redemption money.

November 17, 1955.

Mr. H. W. Conrad, Jr.  
County Attorney  
Pondera County  
Conrad, Montana

Dear Mr. Conrad:

You have presented the following facts for my consideration:

A tract of land was sold at tax sale, and was struck off to the county. The tax sale certificate was assigned by the county to a purchaser who assigned the certificate in blank. Two persons now claim to have received the assignment, but the original certificate has been lost. One of the claimants is the present owner of the land, and the other is the heir of a former owner. The present owner wishes to pay the redemption money on the tax sale certificate, thus removing the certificate from the record.

Three other tax sale certificates were also issued on this land and were assigned to the mother of the present owner. These certificates cannot be found.

Based upon these facts, you have asked my opinion upon the following questions:

1. May the county treasurer turn over the redemption money paid in on the first mentioned tax sale certificate to the present owner of the land, although the said owner is unable to produce the original assignment of the tax sale certificate assigned in blank by the original assignee of the county, if the present owner submits an indemnity bond?

2. In the event an indemnity bond is required, what type of bond should be posted and where should it be filed? Would this

**Opinion No. 41**

**Taxation — Redemption From Tax Sale — County Treasurer — Determination of Ownership of Lost Tax Sale Certificate**

HELD: 1. A County Treasurer may pay redemption monies to a person who presents evidence adequate to prove, in the Treasurer's judgment, that he is the holder of a

bond be a lien upon the real estate of the persons signing the bond?

3. Is it necessary that a claim be made for this redemption money and that this claim be approved by the Board of County Commissioners?

4. May the County Treasurer pay the redemption money paid in on the last three above mentioned tax sale certificates to the administrator of the estate of the landowner's mother, although the administrator cannot produce the original assignments of the tax sale certificates and, in this case, should the County Treasurer require that an indemnity bond be filed?

The County Treasurer's duty to pay redemption money to the holder of the tax sale certificate is set out in Section 84-4133, R.C.M., 1947, as follows:

"Redemption must be made in lawful money, and when paid to the county treasurer, he must credit the amount paid to the person named in the county treasurer's certificate, and pay it on demand to the person or his assignees."

The redemption monies paid to the treasurer are not county funds but belong to, and are held by the treasurer for, the holder of the tax sale certificate. The rule of law is stated in 85 C.J.S., Taxation, § 891, p. 302:

"Money paid to the proper officer of a taxing authority for the redemption of land belongs to the holder of the tax certificate, and the officer holding redemption money may be compelled by mandamus or by an action against him personally or on his official bond to pay over to the person entitled."

The liability for safe-keeping of the funds and payment to the proper person when demanded is a liability of the treasurer in his official capacity. The county is not liable either for keeping or payment of the money unless they have been placed among the county funds by an outgoing treasurer at the end of his term. The general rule on the point has been stated in this way:

" . . . The city or county is not

liable to the holder of the tax certificate for the money paid for redemption unless it appears that it was paid into the treasury by the treasurer at the expiration of his term of office . . ." (Eaton vs. Cass County, 9 N.W. 60, 11 Neb. 229; 85 C.J.S., Taxation, § 891, p. 303.)

From the rules of law above quoted it is evident that the treasurer is under a duty to pay redemption money to the holder of the tax sale certificate upon demand, and may be compelled to pay if he refuses. Since the funds are not county funds, and the county is not, under ordinary circumstances, liable for their payment, it is the treasurer's responsibility to determine the proper person to receive payment. Where conflicting claims are made, as in the present case, the treasurer should examine the claims of the parties and decide which claimant is the proper party to receive payment. If either party is dissatisfied with this decision, a remedy is available to him by mandamus or other appropriate legal action. If the treasurer decides that the evidence on both sides is insufficient, or if he is otherwise unable to determine which is the proper claimant, he may leave both persons to their remedy in the courts.

It is therefore my opinion that the County Treasurer may pay redemption monies to a person who presents evidence adequate to prove, in the treasurer's judgment, that he is the holder of a lost tax sale certificate, and the person entitled to payment.

Your second question concerns the necessity for and the form of indemnity bond to be required upon payment of the redemption money by the treasurer to one of the claimants. The statute does not require filing of a bond, though such a procedure would be an excellent protection to the treasurer or the county as the case might be. The acceptance of such a bond was endorsed by Attorney General Foot, (12, Report and Official Opinions of the Attorney General, 315):

"The county treasurer must accept redemption money, and if the person entitled thereto cannot furnish the assignment of the tax sale

certificate he must furnish a bond before receiving the redemption money.”

Since there is no statutory requirement for the bond, it would appear that any form of bond acceptable to the treasurer or the county as the case may be, would be a proper bond. The bond would be necessary for protection of the county only if the money had been placed in the county treasury by an outgoing treasurer, as outlined above.

It is therefore my opinion that any form of bond acceptable to the party to be indemnified, either the treasurer or the county, would be proper.

Your third question is answered by what has already been said. Since the redemption monies are never county funds, a claim need not be made. In 13, Report and Official Opinions of the Attorney General 184, it was said:

“Moneys paid to a County Treasurer for redemption of property from a certificate of sale which has been assigned to an individual are not county funds and the right of the person entitled to receive them does not constitute a claim against the county. No claim therefor need be filed with the Board of County Commissioners and be approved by the Board as a condition precedent to its payment by the County Treasurer. Such funds are trust funds and need not be paid by warrants but may be paid in specie or by treasurer’s check if he has deposited them in a bank in a separate fund.”

It is therefore my opinion that no claim need be made for payment of redemption monies by the party entitled to the monies.

The answer to your fourth question is substantially the same as the answer to the first—it is for the treasurer to determine whether a person is the holder of a lost tax sale certificate, basing his judgment upon the evidence presented to him by the claimant.

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