

OPINIONS OF THE ATTORNEY GENERAL

VOLUME NO. 39

OPINION NO. 40

COUNTY OFFICERS AND EMPLOYEES - Treasurer;  
STATUTES - Statutory construction;  
TAXATION - Lack of county treasurer's authority to deviate from statutory procedure;  
MONTANA CODE ANNOTATED - Sections 15-17-101, 15-17-201.

HELD: If, because of a defective first notice, the county treasurer cannot publish proper notice of a tax sale on or before the last Monday of June, in accordance with section 15-17-101, MCA, he does not have authority to publish a corrected notice after that date and conduct a legal tax sale.

7 December 1981

Harold F. Hanser, Esq.  
Yellowstone County Attorney  
Yellowstone County Courthouse  
Billings, Montana 59101

Dear Mr. Hanser:

You requested an opinion concerning the following question:

If, because of a defective first notice, the county treasurer cannot publish a proper notice of the tax sale on or before the last Monday of June, may the treasurer publish a corrected notice after that date and still legally conduct the tax sale?

The treasurer's "Notice of Sale of Delinquent Taxes for the year 1980" set the time of sale more than 28 days

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after first publication and is therefore defective under subsection (4) of section 15-17-101, MCA.

Section 15-17-101, MCA, states:

Publication of notice of tax sales. (1) On or before the last Monday of June of each year, the county treasurer must publish in the manner and for the time prescribed in this section a notice specifying:

(a) that at a given time and place (to be designated in the notice), all property in the county upon which delinquent taxes are a lien will be sold at public auction unless prior to said time said delinquent taxes, together with all interest, penalties, and costs due thereon, are paid;

(b) a complete delinquent list of all persons and property in the county now owing taxes, including all city and town property as to which taxes or taxes and assessments are delinquent, is on file in the office of the county treasurer and is subject to public inspection and examination.

(2) The publication must be made once a week for 3 successive weeks in such newspaper published in the county as the board of county commissioners directs; if there is no newspaper published in the county, then by posting a copy of the list in three public places.

(3) The publication must designate the time and place of sale.

(4) The time of sale must not be less than 21 or more than 28 days from the first publication, and the place must be in front of the county treasurer's office.

(Emphasis added.)

The procedure in this statute for the county treasurer to follow is clear and unequivocal. A statute that is plain, unambiguous, direct and certain leaves nothing to

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construe. Hammill v. Young, 168 Mont. 81, 540 P.2d 971 (1975). There is no statutory provision that authorizes the county treasurer to deviate from the procedure in section 15-17-101, MCA, except as to the actual day of the sale: section 15-17-201, MCA, provides that on the day fixed for the sale the county treasurer may postpone the sale from day to day, up to three weeks from the day first fixed. The rules of statutory construction prohibit the omission or insertion of language or substance. Cashmore v. Anderson, 160 Mont. 175, 500 P.2d 921, cert. denied, 410 U.S. 931 (1972).

Tax statutes must be strictly construed. Salvation Army v. State, 144 Mont. 415, 396 P.2d 463 (1964). The Montana Supreme Court has stated the law as to construction of statutes prescribing tax sales procedures:

Proceedings on tax sales are in invitum. Every essential or material step prescribed by the state must be strictly followed. If the requirements of the statute are not strictly followed the sale may be avoided. In the county treasurer's proceedings to sell the land there is no distinction recognized between the mandatory and directory requirements of the statute. The county treasurer must act as the statute directs. Otherwise he acts without authority and the purported sale which he assumes to make is invalid. This holds true even though the requirement with which the county treasurer failed to comply was not enacted for the protection of the owner of land.

The Legislature has expressly prescribed the procedure for the county treasurer to follow with respect to tax sales. The creation of a legitimate deviation from the present statutory procedure must be done by the Legislature. See Dept. of Revenue v. Burlington Northern, Inc., 169 Mont. 202, 545 P.2d 1083 (1976).

THEREFORE, IT IS MY OPINION:

If, because of a defective first notice, the county treasurer cannot publish proper notice of a tax sale on or before the last Monday of June, in

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accordance with section 15-17-101, MCA, he does not have authority to publish a corrected notice after that date and conduct a legal tax sale.

Very truly yours,

MIKE GREELY  
Attorney General