

OPINIONS OF THE ATTORNEY GENERAL

VOLUME NO. 39

OPINION NO. 53

PROPERTY, PERSONAL - Rights conveyed to grantee in tax deed to real property issued in foreclosure of real and personal property tax liens;
PROPERTY, REAL - Rights conveyed to grantee in tax deed to real property issued in foreclosure of real and personal property tax liens;
TAXATION - Rights conveyed to grantee in tax deed to real property issued in foreclosure of real and personal property tax liens;
MONTANA CODE ANNOTATED - Sections 15-16-401, 15-16-402, Title 15, ch. 16, pt. 5, 15-17-207, 15-17-303, 15-18-101 to 15-18-108, 15-18-309.

HEID: The grantee under a tax deed to real property issued after foreclosure of real and personal property liens on the property acquires no right to recover the amount of personal property tax owed by the taxpayer.

24 February 1982

Charles A. Graveley, Esq.
Lewis & Clark County Attorney
Lewis & Clark County Courthouse
Helena, Montana 59601

Dear Mr. Graveley:

You have requested my opinion regarding the rights conveyed to the grantee of real property under a tax deed which he or she receives in consideration of payment of delinquent real and personal property taxes which are a lien on the real property. Under section 15-16-402, MCA, taxes on personal property are a lien against the real property of the taxpayer. Your letter informs me that it is the practice in your county when real property is sold under Title 15, chapter 17, part 1, MCA, to collect both real and personal property taxes which are a lien against the real property sold. The Montana Supreme Court tacitly approved this procedure in Stensvad v. Musselshell County, 36 St. Rptr. 382, 591 P.2d 225 (1979). If no purchaser appears and the property is struck off to the county, § 15-17-207, MCA, the county then recovers both kinds of taxes through an assignment of the county's interest under section

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15-17-303, MCA. The assignee of the county's interest acquires an inchoate ownership interest in the property which allows him to apply for a tax deed if the taxpayer does not exercise his or her statutory right of redemption. § 15-18-201, MCA; see §§ 15-18-101 to 108, MCA. Johnson v. Silver Bow County, 151 Mont. 283, 287, 443 P.2d 6, 8 (1968). You inquire whether a grantee under such a tax deed has any recourse against the taxpayer to recover the amount paid to the county to satisfy delinquent personal property taxes.

In my opinion the grantee has no recourse. In Montana, property taxes operate as a personal obligation against the taxpayer and as a lien against his or her property. §§ 15-16-401, 15-16-402, MCA. The tax may be collected by suit against the taxpayer, see Title 15, ch. 16, pt. 5, MCA, or by seeking issuance of a tax deed in foreclosure of a tax lien. Title 15, ch. 17, MCA. A personal property tax is a lien against the taxpayer's real property. When that lien is foreclosed, a purchaser pays the county the amount of the tax due. The Montana Supreme Court has held that upon receipt of the amount of the delinquent tax by the county and issuance of a tax deed to the person paying the tax or his assignee, the taxpayer's liability for the tax is extinguished. Sutter v. Scudder, 110 Mont. 390, 394, 103 P.2d 303, 305 (1940); Blackford v. Judith Basin County, 109 Mont. 578, 586, 98 P.2d 872, 876 (1940); Calkins v. Smith, 106 Mont. 453, 460, 78 P.2d 74, 77 (1938). Issuance of a tax deed extinguishes the county's right to proceed against the taxpayer to collect the taxes which resulted in foreclosure of the tax lien. My research discloses no case or statute providing that the grantee of property under a tax deed also acquires the county's extinguished right of action against the delinquent taxpayer.

This result is only fair. The taxpayer's right, title and interest in the property are cut off by issuance of a tax deed. The grantee, in consideration of his or her satisfaction of the taxpayer's obligation, receives title to the foreclosed property "free of all encumbrances and clear of any and all claims...except the lien for taxes which may have attached subsequent to the sale" and of the lien of any one of several kinds of special assessments. § 15-18-309, MCA. The taxpayer's obligation is satisfied by his or her forfeiture of the

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property. The grantee acquires only title to the property, not a right to proceed further against the taxpayer.

THEREFORE, IT IS MY OPINION:

The grantee under a tax deed to real property issued after foreclosure of real and personal property liens on the property acquires no right to recover the amount of personal property tax owed by the taxpayer.

Very truly yours,

MIKE GREELY
Attorney General