

VOLUME NO. 40

OPINION NO. 15

COUNTIES - Period for redemption of land sold for taxes;
COUNTIES - Redemption not tolled by partial payment of
back taxes;
MONTANA CODE ANNOTATED - Sections 15-18-101, 15-18-102,
15-18-104.

HELD: The period of redemption for land sold for
delinquent taxes is provided for by section
15-18-101, MCA. Payment of all taxes and
assessments is required for redemption to
occur. The time period cannot be tolled by
payment of part of the delinquent taxes.

19 July 1983

Robert L. Deschamps, III
Missoula County Attorney
Missoula County Courthouse
Missoula MT 59801

Dear Mr. Deschamps:

You requested an opinion concerning:

When land is sold to the county as purchaser
at a tax sale, may the time period for
issuance of a tax deed be tolled by payment of
one year's delinquent taxes, regardless of the
amount of tax actually due on the land?

Title 15, chapter 18, MCA, deals with ownership interests in land sold for taxes. Once a piece of property is sold for delinquent taxes, this chapter governs transactions involving the property. Section 15-18-101, MCA, provides:

A redemption of property sold may be made by the owner or any party having any interest in or lien upon such property within 36 months from the date of purchase or at any time prior to the giving of the notice and the application for a deed as provided in this chapter.

Your question arises due to the present practice of the Missoula County Treasurer's Office. Currently the Treasurer's Office allows the owner of property sold for taxes or any other party who qualifies under section 15-18-101, MCA, to pay one year's delinquent taxes and thereby forestall issuance of a tax deed for an additional year. This allows the owner or interested party to continually stall issuance of a tax deed without actually redeeming the property. You are concerned with the legality of this practice.

Initially, it should be noted that there are two different situations which arise in redemption proceedings. The first is when the property is sold to a private party, the second is when the property is "struck off" to the county. In the former situation, section 15-18-102, MCA, provides that the redemptioner:

[S]hall, in addition to the amount for which said land was sold, with interest thereon, pay the subsequent taxes paid by the purchaser or his assignee at such tax sale, with interest thereon at the rate of 8% per annum from the date of payment of such taxes.

In the latter situation, section 15-18-104, MCA, provides:

In case property is sold to the county as purchaser pursuant to 15-17-207 and is subsequently assessed pursuant to 15-17-304, no person must be permitted to redeem from such sale, except upon payment also of the

amount of such subsequent assessment, costs, fees, and interests.

It is well settled that when the language of a statute is plain, unambiguous, direct and certain, the section speaks for itself and there is nothing left to construe. State v. Hubbard, 39 St. Rptr. 1608, 649 P.2d 1331 (1982); Shannon v. Keller, 37 St. Rptr. 1709, 612 P.2d 1293 (1980). Applying this rule to the instant situation, it is clear that in order for redemption to occur, payment of the total amount due under either of the statutes must occur. Neither section 15-18-102, MCA, nor section 15-18-104, MCA, provides a method for the redemption of property upon partial payment of the amount due. In addition, there is no reference to an extension of the redemption period in section 15-18-101, MCA, upon receipt of a partial payment.

What effect then does the payment of one year's taxes have on the time period for redemption? Section 15-18-101, MCA, provides for two time periods for redemption: (1) "within 36 months from the date of purchase" or (2) "at any time prior to the giving of the notice and the application for a deed." Thus at any time after 36 months the purchaser may apply for a tax deed. The 36-month period begins to run the date the property is purchased, either by a private party or the county. There is no provision in the statute which allows that time period to be tolled. In construing a statute, the function of a court is simply to ascertain and declare what is in substance contained therein, not to insert what has been omitted or omit what has been inserted. Reese v. Reese, 38 St. Rptr. 2167, 637 P.2d 1183 (1981). The Legislature did not provide a method whereby the time for redemption could be tolled, nor is there any indication, by implication or otherwise, that such a procedure was intended. Nothing, of course, prevents a purchaser from voluntarily refraining from applying for a tax deed after 36 months, but the statute does not extend the redemption period as a matter of law due to partial payment of the amount due. As a result, partial payment of the amount necessary to redeem the property has no effect on the statutory redemption period.

THEREFORE, IT IS MY OPINION:

The period of redemption for land sold for delinquent taxes is provided for by section 15-18-101, MCA. Payment of all taxes and assessments is required for redemption to occur. The time period cannot be tolled by payment of part of the delinquent taxes.

Very truly yours,

MIKE GREELY
Attorney General