

OPINIONS OF THE ATTORNEY GENERAL

VOLUME NO. 42

OPINION NO. 117

COUNTY OFFICERS AND EMPLOYEES - County treasurer - a ministerial officer whose duties are limited by statute;
COUNTY OFFICERS AND EMPLOYEES - Lack of authority of county treasurers to refuse partial payment of delinquent property taxes;
TAXATION AND REVENUE - Period of redemption not tolled by partial payment of delinquent taxes;
MONTANA CODE ANNOTATED - Sections 1-2-101, 15-16-102, 15-18-101, 15-18-111, 15-18-112, 15-18-212 to 15-18-214;
OPINIONS OF THE ATTORNEY GENERAL - 42 Op. Att'y Gen. No. 71 (1988), 40 Op. Att'y Gen. No. 15 (1983).

- HELD: 1. Partial payment of delinquent property taxes does not toll the period of redemption.
2. The county treasurer may not refuse partial payment of delinquent property taxes as long as delinquent taxes are due and the payment is made in accordance with section 15-16-102(5), MCA.

20 October 1988

Speaker Bob Marks
Montana House of Representatives
302 Lump Gulch
Clancy MT 59634

Dear Speaker Marks:

You have requested my opinion on several questions relating to delinquent property taxes, which I have rephrased as follows:

1. Does partial payment of delinquent property taxes toll the period of redemption?

OPINIONS OF THE ATTORNEY GENERAL

2. May the county treasurer refuse to accept partial payment of taxes after notice under section 15-18-212, MCA, has been given?
3. If partial payment of delinquent taxes tolls the redemption period, is a tax deed invalid if issued pursuant to a notice stating that all delinquent taxes must be paid before the end of the three-year redemption period?
4. Is a tax deed invalid if issued after a taxpayer has tendered a partial payment that was refused by the county treasurer?

Your questions arise from legislation enacted in 1987 (Senate Bill 162) in an attempt to clarify and facilitate the tax sale and tax deed process. The most significant aspect of this legislation, with respect to your questions, is a new provision enabling partial payment of delinquent property taxes. Prior to 1987, delinquent property taxes could not be paid in installments; the taxpayer or redemptioner was required to pay all delinquent taxes at once. 40 Op. Att'y Gen. No. 15 at 55 (1983); see also 42 Op. Att'y Gen. No. 71 (1988).

In 1987, section 15-16-102, MCA, was amended to include a new subsection:

(5) If the taxes become delinquent, the county treasurer may accept a partial payment equal to the delinquent taxes, including penalty and interest, for one or more full taxable years, provided both halves of the current tax year have been paid. Payment of delinquent taxes must be applied to the taxes that have been delinquent the longest.

With respect to your first question, the governing statute is section 15-18-111, MCA, which provides in pertinent part:

(1) Except as provided in subsection (2), redemption of a property tax lien acquired at a tax sale or otherwise may be made by the owner, the holder of an unrecorded or improperly recorded interest, the occupant of the property, or any interested party within 36 months from the date of the first day of the tax sale or within 60 days following the

OPINIONS OF THE ATTORNEY GENERAL

giving of the notice required in 15-18-212,
whichever is later. [Emphasis added.]

Subsection (2) shortens the period of redemption to 18 months for undeveloped subdivided properties.

This section contains no provision for extending the period of redemption when partial payments of delinquent taxes have been made. The absence of a tolling provision in this section is significant in two respects. First, the redemption section quoted above was included in Senate Bill 162 (section 16) which also contained the new partial payment provision (section 30). The Legislature is presumed to have enacted all of the sections of Senate Bill 162 with the requisite intent. Department of Revenue v. Burlington Northern, 169 Mont. 202, 545 P.2d 1083, 1085 (1976). Thus, if the Legislature had intended to enact a tolling provision for partial payments it would have done so. Where the Legislature failed to include a provision that would toll the period of redemption upon partial payment of delinquencies, I cannot insert such a provision. See § 1-2-101, MCA.

Second, the language in section 16 of Senate Bill 162, which establishes the three-year redemption period, is substantially the same as the repealed section 15-18-101, MCA, which stated:

A redemption of the 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.

This section was interpreted in 40 Op. Att'y Gen. No. 15 at 55 (1983), which held that the statutes in existence did not provide for partial payment of delinquent taxes, but that in any event such partial payments do not extend the three-year redemption period. The rules of statutory construction provide that reenactment of a statute or passage of a similar one in substantially the same terms is an adoption of the construction placed on the previous statute by administrative agencies. State ex rel. Lewis and Clark County v. State Board of Public Welfare, 141 Mont. 209, 376 P.2d 1002, 1003 (1962). The 1987 Legislature was well aware of the Attorney General's Opinion, as section 30 of Senate Bill 162 was an express reaction to the opinion's conclusion that there was no existing statutory authority for partial payment of delinquent taxes. See Hearings on Senate

OPINIONS OF THE ATTORNEY GENERAL

Bill 162 before the Senate Taxation Committee, Jan. 31, 1987; House Taxation Committee, March 26, 1987.

I therefore conclude that in enacting sections 16 and 30 of Senate Bill 162, the Legislature intended to give the taxpayers a break on payment of delinquencies but still within the confines of the statutory redemption period.

Your second question concerns the tender of partial payment of delinquent taxes after notice of issuance of a tax deed has been given. As a preliminary matter, I note that such a tender, in light of my holding that partial payment does not toll the period of redemption, will not forestall the potential for issuance of the tax deed. Only full payment of the amount for which the property tax lien was sold, including penalties, interest, costs, and any subsequent taxes paid by the purchaser will effect a redemption. § 15-18-112, MCA.

The resolution of your second question turns on whether section 15-16-102(5), MCA, is mandatory or directory as it pertains to the authority of the county treasurer: "If the taxes become delinquent, the county treasurer may accept a partial payment" (Emphasis added.) In interpreting a statute, the paramount rule is to give effect to the intention of the Legislature. § 1-2-102, MCA. This rule applies to interpretation of a statute as mandatory or directory. 2A Sutherland, Statutory Construction § 57.02 (4th ed. 1984). In determining legislative intent the history of the statute in the course of the bill through the Legislature can be used to determine mandatory or directory intent. Id. at § 57.05. The history of Senate Bill 162 elucidates the legislative intent behind the language enacted into law. Section 30 of Senate Bill 162 was originally drafted to reflect the Attorney General's Opinion that interpreted the existing law to preclude partial payment of delinquent property taxes. The pertinent language of the bill was: "[T]he county treasurer may not accept partial payment of the delinquent taxes" The language was subsequently changed to permit partial payment, by deleting the "not." The language of section 30 was merely intended to authorize partial payment of delinquent taxes. There is no indication in either the language of the bill or the legislative minutes that the Legislature intended to grant a discretionary power to the county treasurer to decide whether to permit or prevent a taxpayer from making partial payments.

Another rule of statutory construction is that where a statute provides for performance of acts or the exercise of power or authority by public officials protecting private rights or in the public interest, it is

OPINIONS OF THE ATTORNEY GENERAL

mandatory, irrespective of whether it is phrased in mandatory or directory terms. Adoption of Bascom, 126 Mont. 129, 246 P.2d 223, 225 (1952); Sutherland, supra, at § 57.14. Thus, since section 15-16-102(5), MCA, provides for action by the treasurer for the benefit of the taxpayer, the provision should be construed as mandatory.

Furthermore, to interpret the section as directory, placing on the county treasurer a discretionary power that affects the rights of taxpayers, would contravene the traditional and statutory function of the county treasurer. The county treasurer is a ministerial officer, without authority, either express or implied, other than that conferred on him by statute. Rosebud County v. Smith, 92 Mont. 75, 9 P.2d 1071, 1072 (1932). The statutory duties of the county treasurer are indeed ministerial; they are enumerated in section 7-6-2111, MCA. One of those duties is to "receive all money belonging to the county and all other money directed to be paid to him by law." § 7-6-2111(1), MCA.

Thus, to construe section 15-16-102(5), MCA, as directory would impose a discretionary duty on the county treasurer that is not otherwise authorized by law nor accompanied by statutory guidelines. The county treasurer's refusal to accept a partial payment of a delinquent tax would deleteriously affect the rights of the taxpayer. Finally with regard to this question, suggestions have been made that the county commissioners could establish a policy enumerating the circumstances under which the county treasurer would accept or refuse partial payment. However, even if the section were interpreted to be directory, such duties imposed on the treasurer could not be delegated to the county commissioners. 38 Op. Att'y Gen. No. 85 (1980) at 294 (the board of county commissioners may not assume control over the manner in which a county officer's duties are performed).

I therefore conclude that the county treasurer has no discretion to refuse a partial payment of delinquent taxes, so long as the payment is made in accordance with section 15-16-102(5), MCA.

Your third question need not be answered because I have concluded that partial payment does not toll the period of redemption. Your fourth question is inappropriate for an Attorney General's Opinion because a tax deed when issued is presumed valid and is prima facie evidence of legal and valid ownership. §§ 15-18-213, 15-18-214, MCA. A determination of invalidity of a tax

OPINIONS OF THE ATTORNEY GENERAL

deed would require legal action and findings by a court of law. See §§ 15-18-411 to 413, MCA.

THEREFORE, IT IS MY OPINION:

1. Partial payment of delinquent property taxes does not toll the period of redemption.
2. The county treasurer may not refuse partial payment of delinquent property taxes as long as delinquent taxes are due and the payment is made in accordance with section 15-16-102(5), MCA.

Very truly yours,

MIKE GREELY
Attorney General