

VOLUME NO. 43

OPINION NO. 38

CITIES AND TOWNS - Assignment of interest in tax sale certificate;
CITIES AND TOWNS - Purchase of tax sale certificate from county;
CITIES AND TOWNS - Responsibility for payment of special assessment after taking tax deed;
COUNTIES - Assignment of interest in tax sale certificate;
COUNTIES - Responsibility for payment of special assessment after purchasing interest in tax sale certificate;
COUNTIES - Responsibility for payment of special assessment after taking tax deed;
LIENS - Effect on special assessment lien when tax deed is issued to municipality or county;
TAXATION AND REVENUE - Effect on special assessment lien when county or municipality takes tax deed;
TAXATION AND REVENUE - Payment for special assessment lien when county or municipality purchases and assigns interest in tax sale certificate;
MONTANA CODE ANNOTATED - Sections 15-17-121(5), 15-17-214, 15-17-317, 15-17-318(1), 15-17-323(1), 15-17-324, 15-18-211, 15-18-214, 50-60-301;
OPINIONS OF THE ATTORNEY GENERAL - 42 Op. Att'y Gen. No. 82 (1988), 41 Op. Att'y Gen. No. 77 (1986).

- HELD: 1. When a county becomes a purchaser of a tax sale certificate pursuant to section 15-17-214, MCA, the county is not required to pay special assessments levied against the property after the tax sale.
2. When a county assigns its interest as purchaser of a tax sale certificate, it must collect from the assignee all delinquent taxes and assessments due on the property that is the subject of that interest, unless the assignee is a municipality. If the assignee is a municipality, the county must collect only delinquent taxes (excluding assessments) and costs.
3. If a municipality takes an assignment of interest in a tax sale certificate from a county pursuant to section 15-17-317, MCA, the municipality must reassign that interest only if a subsequent purchaser pays both the municipality's purchase price and any delinquent assessments against the property, plus interest, penalties, and costs.

4. If either a county or a municipality takes a tax deed to property pursuant to section 15-18-211, MCA, the granting of the tax deed extinguishes the lien created by any special assessment against the property which becomes payable prior to the issuance of the deed, but leaves unaffected any lien created by a special assessment which first becomes payable after issuance of the deed.

September 25, 1989

Lee R. Kerr
Treasure County Attorney
Treasure County Courthouse
Hysham MT 59038

Dear Mr. Kerr:

You have requested my opinion regarding the collection of a delinquent special assessment levied by a town against property which is also involved in tax sale proceedings in the county, due to nonpayment of property taxes. I have taken the liberty of rephrasing your questions as follows:

When a municipality levies a special assessment against property after the property has been struck off to the county following a tax sale:

1. Is the county liable for the special assessment imposed by the municipality?
2. If the county assigns its interest in the tax sale certificate as provided in section 15-17-214(3), MCA, and section 15-17-323, MCA, must it collect the special assessment from the assignee?
3. If the municipality purchases an assignment of the tax sale certificate from the county, must it collect the special assessment from subsequent assignees?
4. If either the county or the municipality were to take a tax deed to the property, would the issuance of the tax deed extinguish the special assessment?

You have explained that these questions arose after Treasure County ("the county") was deemed to be the "purchaser" under section 15-17-214, MCA, of a tax sale certificate to property located in the town of Hysham ("the municipality"). You also explained that after the county became the purchaser of the tax sale certificate, the municipality removed a dangerous building from

the property and levied a special assessment against that property pursuant to the Uniform Code for the Abatement of Dangerous Buildings (1985 ed.) (hereinafter "the abatement code").

The abatement code was adopted by the municipality in accordance with section 50-60-301, MCA, and has also been adopted by the Department of Commerce pursuant to section 50-60-203, MCA. See also § 8.70.103, ARM. When a jurisdiction which has adopted the abatement code incurs expenses in demolishing a dangerous building, the governing body of that jurisdiction is entitled to assess a charge constituting a special assessment and lien upon the affected property for the costs of demolition. § 905, Uniform Code for the Abatement of Dangerous Buildings (1985 ed.). The code also provides that "[t]he amount of the assessment shall be collected at the same time and in the same manner as ordinary property taxes are collected and shall be subject to the same penalties and procedure and sale in case of delinquency as provided for ordinary property taxes. All laws applicable to the levy, collection and enforcement of property taxes shall be applicable to such assessment." § 911, Uniform Code for the Abatement of Dangerous Buildings.

It is my understanding that since the county was deemed to be the "purchaser" of the tax sale certificate, the redemption period provided for in section 15-18-111, MCA, has passed, the property tax lien has not been redeemed, and the county commissioners have not directed the treasurer to issue the county a tax deed pursuant to section 15-18-211(3), MCA.

Regarding your first question, section 15-17-214, MCA, provides that when no other purchaser comes forward to pay the delinquent taxes on property at a tax sale, the county is deemed to be the purchaser of the tax sale certificate, without payment. However, section 15-17-324, MCA, provides:

- (1) The assessment of property on which a tax sale certificate has been issued or for which the county is listed as the purchaser as provided in 15-17-214 continues in the same manner as other property is assessed.
- (2) If any assessed taxes are not paid when due, they are delinquent.

This statute clearly indicates that although a county may be considered the purchaser of a tax sale certificate without payment under section 15-17-214, MCA, the subject property continues to be assessed just as any other property would be, and if assessments are not timely paid, they become delinquent. Sections 15-17-214 and 15-17-324, MCA, must be construed together, giving effect to each if possible. Matter of W.J.H., 44 St. Rptr. 817, 821, 736 P.2d 484, 486-87 (1987); City of Billings v. Smith, 158 Mont. 197, 212, 490 P.2d 221, 230 (1971). It would be illogical for the Legislature first to deem the county the purchaser of a tax sale certificate, without payment of delinquent

taxes and assessments, when no other purchaser comes forward at a tax sale, and then to place responsibility on the county for payment of future assessments. Thus I conclude that although the special assessment at issue was correctly assessed against the property despite the fact that the county was considered the purchaser at a tax sale, the county as purchaser of the tax sale certificate is not itself required to pay the newly delinquent assessment.

In answer to your second question, if the county assigns its interest as purchaser of the tax sale certificate, it must collect from the assignee all "delinquent taxes, including penalties, interest, and costs, accruing from the date of delinquency." § 15-17-323(1), MCA.

Because the word "taxes" as used in the tax sale statutes includes all property assessments and fees related to property in addition to ad valorem property taxes (§ 15-17-121(5), MCA), the county must collect the special assessment from an assignee in accordance with section 15-17-323, MCA. The only exception would be if the county were to assign its interest to a municipality pursuant to section 15-17-317, MCA, which provides in part as follows:

Whenever property has been struck off to the county at a tax sale under ... [15-17-214], is subject to the lien of delinquent special assessments, and has not been assigned under ... [15-17-214] or ... [15-17-323], at the request of the municipality the county treasurer shall assign all of the rights of the county acquired therein at the sale to the municipality upon payment of any delinquent taxes (excluding assessments) and costs, without penalty or interest. [Emphasis provided.]

According to the explicit language of section 15-17-317, MCA, such an assignment must be made to the municipality upon payment of only the delinquent taxes and costs less assessments. If the municipality takes such an assignment, the property that is the subject of the assignment "must be held in trust by the municipality for the improvement fund into which the delinquent special assessments are payable." § 15-17-317, MCA. It should be observed here that in 1987, after repealing the entire statutory scheme dealing with tax sales and tax deeds, the Legislature enacted statutes which streamlined the tax sale and tax deed process. 1987 Mont. Laws, ch. 587. Prior to 1987, a municipality taking an assignment of a tax sale certificate considered as purchased by a county at a tax sale had no option but to pay all delinquent taxes and assessments, together with all associated interest and penalties. See 42 Op. Att'y Gen. No. 82 (1988). Since 1987, however, a municipality taking such an assignment from a county is specifically excused from paying delinquent assessments by section 15-17-317, MCA (1987).

Your third question concerns whether, after taking an assignment pursuant to section 15-17-317, MCA, the municipality must collect the special assessment from subsequent assignees. Section 15-17-318(1), MCA, provides the answer:

At any time after a parcel of land has been acquired by a municipality, as provided in 15-17-317, and has not been redeemed, the treasurer of the municipality shall assign all the rights of the municipality in the property to any person who pays:

- (a) the purchase price paid by the municipality;
- (b) the delinquent assessments;
- (c) interest on the purchase price and delinquent assessments at the rate of 5/6 of 1% a month; and
- (d) penalties and costs as provided by law. [Emphasis provided.]

Thus, after the municipality has purchased the county's interest in tax sale property pursuant to section 15-17-317, MCA, it must reassign that interest only if a subsequent purchaser pays the municipality's purchase price and the delinquent assessment, plus interest, penalties, and costs.

Regarding your fourth question, under the circumstances presented it would be possible for either the county or the municipality to take a tax deed to the property, provided no third-party purchaser comes forward in accordance with section 15-17-318(1) or 15-17-323, MCA. For example, because the redemption period has passed, and the tax lien at issue was not timely redeemed, the county commissioners could by resolution direct the county treasurer to issue the county a tax deed pursuant to section 15-18-211(3), MCA. Alternatively, the municipality could purchase an assignment from the county in accordance with section 15-17-317, MCA, and because the tax lien was not timely redeemed, the county treasurer would be required under section 15-18-211(1), MCA, to issue a tax deed to the municipality. You have asked whether, given either alternative, the lien created by the special assessment survives the issuance of a tax deed. Prior to 1987, this question was addressed by section 15-18-309, MCA (1985), which provided in relevant part as follows:

Effect of deed. The deed issued under this or any other law of this state shall convey to the grantee the absolute title to the lands described therein as of the date of the expiration of the period for redemption, free of all encumbrances and clear of any and all claims of said defendants to said action except the lien for taxes which may have attached subsequent to the sale and

the lien of any special, local improvement, irrigation, and drainage assessments levied against the property, payable after the execution of said deed[.]

The quoted statutory language was construed by the Attorney General as leaving unaffected special assessments payable after execution of the tax deed, but extinguishing those special assessments payable before the taking of the tax deed. 41 Op. Att'y Gen. No. 77 (1986) at 343-44. Although the Legislature repealed section 15-18-309, MCA, in 1987, it enacted a replacement, § 15-18-214, MCA, which provides in pertinent part:

Effect of deed. (1) A deed issued under this chapter conveys to the grantee absolute title to the property described therein as of the date of the expiration of the redemption period, free and clear of all liens and encumbrances, except:

- (a) when the claim is payable after the execution of the deed and:
 - (i) a property tax lien attaches subsequent to the tax sale; or
 - (ii) a lien of any special, rural, local improvement, irrigation, or drainage assessment is levied against the property[.]

The language of the 1987 enactment is substantially similar to the language quoted above from the repealed 1985 statute. Reenactment of a statute in substantially the same terms constitutes an adoption of the practical construction placed on the previous statute by executive or administrative departments of government. State ex rel. Lewis & Clark County v. State Board of Public Welfare, 141 Mont. 209, 212, 376 P.2d 1002, 1003 (1962); 82 C.J.S. Statutes § 370(b)(2) (1953). I therefore conclude the granting of a tax deed extinguishes the lien created by a special assessment which becomes payable prior to the issuance of the deed, but leaves unaffected any lien created by a special assessment which first becomes payable after issuance of the deed. This conclusion applies regardless of whether the deed is granted to the county or the municipality. I am bolstered in this conclusion by the careful choice of words used by the Legislature in drafting the exceptions to the general rule that issuance of a tax deed grants title "free and clear of all liens and encumbrances." Section 15-18-214(1)(a)(ii), MCA, provides the pertinent exception here, and that exception is triggered only when the special assessment against the tax deed property becomes payable after the execution of the deed.

THEREFORE, IT IS MY OPINION:

1. When a county becomes a purchaser of a tax sale certificate pursuant to section 15-17-214, MCA, the county is not required

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to pay special assessments levied against the property after the tax sale.

2. When a county assigns its interest as purchaser of a tax sale certificate, it must collect from the assignee all delinquent taxes and assessments due on the property that is the subject of that interest, unless the assignee is a municipality. If the assignee is a municipality, the county must collect only delinquent taxes (excluding assessments) and costs.
3. If a municipality takes an assignment of interest in a tax sale certificate from a county pursuant to section 15-17-317, MCA, the municipality must reassign that interest only if a subsequent purchaser pays both the municipality's purchase price and any delinquent assessments against the property, plus interest, penalties, and costs.
4. If either a county or a municipality takes a tax deed to property pursuant to section 15-18-211, MCA, the granting of the tax deed extinguishes the lien created by any special assessment against the property which becomes payable prior to the issuance of the deed, but leaves unaffected any lien created by a special assessment which first becomes payable after issuance of the deed.

Sincerely,

MARC RACICOT
Attorney General