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VOLUME NO. 45

OPINION NO. 2

CITIES AND TOWNS - Distribution of proceeds from tax deed sale;
COUNTIES - Distribution of proceeds from tax deed sale;
LIENS - Effect of tax deed sale on special assessments;
TAXATION AND REVENUE - Distribution of proceeds from tax deed sale;
MONTANA CODE ANNOTATED - Sections 7-8-2301, 7-8-2306, 15-17-317 to
15-17-319, 15-18-214;
OPINIONS OF THE ATTORNEY GENERAL - 43 Op. Att'y Gen. No. 38 (1989).

HELD: MCA § 7-8-2306, which governs the distribution of
proceeds from a sale of county tax deed land, requires
that city assessments be included and prorated as part
of the allocation of monies received from that sale,
regardless of when those assessments became payable.

April 5, 1993

Mr. David N. Hull
Helena City Attorney
City-County Administration Building
316 North Park
Helena, MT 59623

Dear Mr. Hull:

You have requested my opinion regarding the allocation of proceeds
from a sale of tax deed land. Specifically, you have asked:

When a county sells tax deed land pursuant to MCA
§ 7-8-2301, and the proceeds of the sale are not
sufficient to cover the taxes and assessments, are city
assessments to be included and prorated as part of the
allocation of the monies received from the tax deed sale?

This question arises because the City of Helena [City] and Lewis
and Clark County [County] have taken contrary positions regarding
the interpretation of MCA § 7-8-2306. This statute governs the
distribution of proceeds of the sale of tax deed land, and provides
in relevant part:

The proceeds of each sale or lease under this part or part 25 must be paid over to the county treasurer, who shall apportion and distribute the proceeds in the following manner:

(1)(a) Upon a sale of the property, the proceeds of each sale must be credited to the county general fund for reimbursement of expenditures made from it in connection with the procurement of the tax deed and holding of the sale.

(b) Upon a sale of the property, if there is any money remaining after the payment of the amount specified in subsection (1)(a) and the remainder is:

(i) in excess of the aggregate amount of all taxes and assessments accrued against the property for all funds and purposes, without penalty and interest, then as much of the remaining proceeds must be credited to each fund or purpose as each fund or purpose would have received had the taxes been paid before becoming delinquent, and all excess must be credited to the general fund of the county; or

(ii) less in amount than the aggregate of all taxes and assessments accrued against the property for all funds and purposes, without penalty or interest, the proceeds must be prorated between the funds and purposes in the proportion that the amount of taxes and assessments accrued against the property for each fund or purpose bears to the aggregate amount of taxes and assessments accrued against the property for all funds and purposes.

The City asserts that its assessments constitute a "fund" or "purpose" to which excess proceeds must be allocated on a pro rata basis in accordance with subsection (b)(ii) of this statute. The County, on the other hand, argues that the City is not eligible for proceeds under MCA § 7-8-2306, because it has an alternative means of protecting its interest in tax deed property.

It is true that the City, unlike other entities, has a statutory right to protect its interest in tax sale property which is purchased by the county under MCA § 15-17-214. In accordance with MCA § 15-17-317, a county which has become a purchaser of property at the tax sale and which is requested to do so by a municipality must assign its interest in tax sale property upon payment of all delinquent taxes, excluding assessments, plus costs without penalty or interest. The municipality is then required to hold the property in trust for the improvement fund into which the delinquent special assessments are payable. MCA § 15-17-317. Alternatively, the municipality may assign its interest or sell or lease the property, thereby recouping all costs associated with the

transfer of tax deed property, as well as delinquent assessments and interest thereon. MCA §§ 15-17-318 and -319; see also 43 Op. Att'y. Gen. No. 38 at 120, 123-24 (1989).

If a municipality exercises its right of assignment in accordance with MCA § 15-17-317, it forecloses the right of other entities to share in tax sale proceeds under MCA § 7-8-2306. In this respect, municipalities enjoy a significant advantage over other entities with similar interests in tax deed property. However, the right of assignment is not the sole means by which the City can cover the cost of delinquent assessments.

There is nothing in the language of MCA § 7-8-2306(1)(b)(ii) or MCA § 15-17-317 which suggests that the City's failure to exercise its right of assignment constitutes a waiver of its right to receive remaining proceeds on a pro rata basis. To infer this limitation would be contrary to the rule of statutory construction whereby the law must be construed as it is found without inserting what has been omitted. Dunphy v. Anaconda Co., 151 Mont. 76, 80, 438 P.2d 660, 662 (1968).

The language of MCA § 7-8-2306 is clear and unambiguous: If there is any money remaining after the county is reimbursed for its costs associated with the procurement of the tax deed and that money is insufficient to pay the aggregate amount of *all taxes and assessments* accrued against the property for *all funds and purposes*, the proceeds are prorated "in the proportion that the amount of taxes and assessments accrued against the property for *each fund or purpose* bears to the aggregate amount of taxes and assessments accrued against the property for *all funds and purposes*." MCA § 7-8-2306(1)(b)(ii) (emphasis supplied).

Nothing therein suggests that city assessments are not included or are not prorated as part of the allocation of monies received from the sale of county tax deed land. Statutes are to be construed according to the plain meaning of their terms, and the plain meaning of the term "all" precludes the county's interpretation of this statute. Norfolk Holdings, Inc. v. Montana Dep't of Revenue, 249 Mont. 40, 43, 813 P.2d 460, 461 (1991).

I conclude that, where a city has not requested and received assignment of the county's rights to the tax sale property, the city assessments must be included and prorated as part of the allocation of monies received from a sale of county tax deed land under MCA § 7-8-2306(1)(b)(ii). Since the same operative language is used in subsection (b)(i) of that statute, I also conclude that city assessments must be included and credited as provided therein if the remaining money from the sale of the county tax deed land exceeds the aggregate value of all taxes and assessments.

This conclusion is unaffected by the fact that issuance of a tax deed grants title "free and clear of all liens and encumbrances," including special assessments which become payable prior to issuance of the deed. MCA § 15-18-214. In 43 Op. Att'y. Gen. No. 38 at 125 (1989), Attorney General Racicot held that if either a county or a municipality takes a tax deed to property, the only special assessments which survive issuance of the tax deed are those which first become payable *after* issuance of the deed. Id. at 125. The County suggests that, in light of this statute and corresponding opinion, it need only prorate those assessments which become payable after issuance of the deed. While MCA § 15-18-214 does in fact extinguish all liens which become payable prior to issuance of the deed, it does not affect the amount to be distributed upon sale under MCA § 7-8-2306. MCA § 7-8-2306(1)(b)(i) states that "the remaining proceeds must be credited to each fund or purpose as each fund or purpose would have received had the taxes been paid *before becoming delinquent.*" (Emphasis supplied.) Likewise, subsection (b)(ii) states that proceeds must be prorated "between the funds and purposes in the proportion that the amount of taxes and assessments accrued against the property *for each fund or purpose bears to the aggregate amount of taxes and assessments accrued against the property for all funds and purposes.*" (Emphasis supplied.) There is no correlation between the method of distribution outlined in MCA § 7-8-2306 and the effect of a tax deed in MCA § 15-18-214.

THEREFORE, IT IS MY OPINION:

MCA § 7-8-2306, which governs the distribution of proceeds from a sale of county tax deed land, requires that city assessments be included and prorated as part of the allocation of monies received from that sale, regardless of when those assessments became payable.

Sincerely,



JOSEPH P. MAZUREK
Attorney General

JPM/JA/brf