

DISTRIBUTED BY:
CROSBY OPINION SERVICE
2210 East 6th Ave.
Helena, MT 59601
406-443-3418

VOLUME NO. 45

OPINION NO. 24

CITIES AND TOWNS - Effect of sale of tax deed land by county on delinquent SID assessments;
COUNTIES - Effect of sale of tax deed land by county on delinquent SID assessments;
SPECIAL IMPROVEMENT DISTRICTS - Effect of sale of tax deed land by county on delinquent SID assessments;
TAXATION AND REVENUE - Effect of sale of tax deed land by county on delinquent SID assessments;
MONTANA CODE ANNOTATED - Sections 7-8-2306, 7-12-4183, 15-18-214;
OPINIONS OF THE ATTORNEY GENERAL - 45 Op. Att'y Gen. No. 2 (1993), 43 Op. Att'y Gen. No. 38 (1989), 41 Op. Att'y Gen. No. 77 (1986).

HELD: Although a county treasurer may not require delinquent SID assessments to be paid in addition to the sale price of tax deed land, the county treasurer must apply the sale proceeds of the land to delinquent SID assessments as provided in Mont. Code Ann. § 7-8-2306.

May 23, 1994

Mr. Gale R. Gustafson
Conrad City Attorney
400 South Main, Suite 101
Conrad, MT 59425

Dear Mr. Gustafson:

You have requested my opinion on the following issue:

May a county treasurer require a purchaser of tax deed property to pay delinquent SID assessments on the property prior to its transfer?

The property in question was purchased by the county pursuant to Mont. Code Ann. § 15-17-214 and the county commissioners directed the county treasurer to issue the county a tax deed pursuant to Mont. Code Ann. § 15-18-211(3). The city was not assigned any of the county's rights under Mont. Code Ann. § 15-17-317. The county sold the tax deed pursuant to Mont. Code Ann. §§ 7-8-2301 to -2308 which define the procedures for disposing of county tax deed property.

Your request stems from past practices of the county in which the county treasurer has required the purchaser of tax deed property to pay any special improvement district (SID) assessments prior to transferring the property. You have indicated that at a recent sale, the purchaser contended that he is not liable for payment of any special assessments imposed on the property, relying upon Mont. Code Ann. § 15-18-214. Your situation is complicated by the fact that the SID assessments had been accelerated by the city prior to the taking of the tax deed by the county, thereby making all assessments due and payable prior to issuance of the tax deed. See Mont. Code Ann. § 7-12-4183 (allowing city to adopt a resolution authorizing acceleration of the remaining SID payments when earlier assessments have become delinquent). In addition to your question on the propriety of requiring payment of SIDs prior to transfer of tax deed land, you have asked if the city must "decelerate" the SID assessments in order to prevent them from being extinguished upon issuance of a tax deed.

Mont. Code Ann. § 15-18-214 defines the effect of issuance of a tax deed and provides in pertinent part that when a tax deed is issued, absolute title to the property is conveyed "free and clear of all liens and encumbrances" except when the claim is payable after the execution of the deed and a lien of a special improvement district is levied against the property. Former Attorney General's Opinions have confirmed that this statute operates to extinguish special assessment liens that were due and payable at the time the tax deed was issued, but that the statute does not extinguish any future assessments. 43 Op. Att'y Gen. No. 38 at 125 (1989), 41 Op. Att'y Gen. No. 77 at 344 (1986). Thus, when the county took the tax deed all special assessments that were then due and payable were extinguished. If the city had accelerated the assessments under Mont. Code Ann. § 7-12-4182 or -4183 by making all special assessments due and payable, all such accelerated payments would be extinguished upon issuance of the tax deed. See 41 Op. Att'y Gen. No. 77 at 344 (because of acceleration, all assessment payments were due and payable immediately and were therefore extinguished in their entirety at the time the tax deed was issued). However, if, prior to the county's taking of the tax deed, the city withdraws the acceleration and declares future assessments no longer delinquent, then only the past assessments which were actually due and payable prior to the issuance of the tax deed would be extinguished and any future assessments would remain unaffected. See Mont. Code Ann. § 7-12-4184(3) (withdrawal of declaration of delinquency may be made before tax deed is executed).

Withdrawal of the delinquency or "deceleration" is not the only alternative open to a city. The city could seek assignment of the tax certificate under Mont. Code Ann. § 15-17-318, but would have

had to pay the delinquent county taxes. The city then would have the option of either reassigning the property to a third-party purchaser under Mont. Code Ann. § 15-17-317, or, after the redemption period, obtaining a tax deed under Mont. Code Ann. § 15-18-211 and conducting its own sale pursuant to Mont. Code Ann. § 15-17-319.

Even if the city does not "decelerate" the SID payments or take an assignment of the property, the city may still recoup the delinquent assessments from the purchase price paid at the sale of the tax deed property. Mont. Code Ann. § 7-8-2306 defines how the proceeds from the sale of the tax deed land must be distributed. First, the proceeds are credited to the county general fund for reimbursement of expenditures made from it in connection with the procurement of the tax deed and the holding of the sale. Mont. Code Ann. § 7-8-2306(1)(a). Any remainder of the proceeds is distributed in the manner described in Mont. Code Ann. § 7-8-2306(1)(b)(i) and (ii). If the remainder is:

(i) in excess of the 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 amount 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.

Thus, the sale price of the tax deed land must be applied to all the delinquent taxes and assessments. This interpretation--that assessments must be included in the disbursement of the proceeds--was affirmed in a recent opinion. See 45 Op. Att'y Gen. No. 2 (1993). If there is money left over after the sale price has been credited to the delinquent taxes and assessments, then the excess goes to the county general fund. If there is not sufficient money to cover all the taxes and assessments, the money is prorated among the various funds.

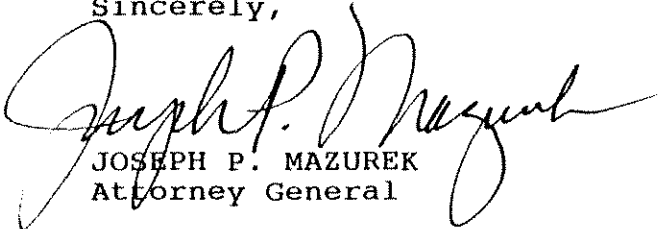
45 Op. Att'y Gen. No. 24
Page 4
May 23, 1994

The practice of the county treasurer to require payment of the assessments at the time of sale of tax deed property is, therefore, appropriate as long as the money is taken from the actual sale proceeds. It is not appropriate, however, to require payment of the assessments *in addition to* the sale price, because absent a statutory provision allowing such practice, the taxes and assessments are otherwise considered extinguished at time of issuance of the tax deed. While this reasoning may seem inconsistent, as I pointed out in 45 Op. Att'y Gen. No. 2, "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." The sale proceeds of the tax deed land must therefore be distributed to pay off the taxes and assessments to the greatest extent possible, despite the removal of the liens when the tax deed was issued to the county.

THEREFORE, IT IS MY OPINION:

Although a county treasurer may not require delinquent SID assessments to be paid in addition to the sale price of tax deed land, the county treasurer must apply the sale proceeds of the land to delinquent SID assessments as provided in Mont. Code Ann. § 7-8-2306.

Sincerely,



JOSEPH P. MAZUREK
Attorney General

jpm/elg/brf