

# OFFICE OF THE CITY ATTORNEY

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## Legal Opinion 2018-018

**TO:** Mayor John Engen, City Council, Dale Bickell, Ginny Merriam, Leigh Griffing, Scott Paasch, Marty Rehbein, Kirsten Hands, Kelly Elam, Mike Haynes, Mike Brady, Scott Hoffman, Steve Johnson

**CC:** Legal Staff

**FROM:** Jim Nugent, City Attorney

**DATE:** August 30, 2018

**RE:** Montana Constitution safeguards the right of a person to be free from imprisonment for debt.

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### FACTS:

Assertions have recently been expressed at city council meetings that a property owner with delinquent property taxes could allegedly be taxed out of their residence by high property taxes and ultimately be removed from their residential property by law enforcement officers wearing guns. The statutory process for tax liens is a civil process and does not include law enforcement physical removal of property owners from their property. Property taxes are collected by Missoula County. Missoula city police do not ever remove any property owner from their property for solely property tax delinquency. An attorney of the Missoula County Attorney's office civil staff informs me that he has never heard of any scenario in Missoula County where law enforcement was involved in physically removing a property owner from their property in a delinquent property tax proceeding.

### ISSUE:

Does the 1972 Montana Constitution safeguard the rights of a person to be free from imprisonment for debt?

### CONCLUSION:

Yes, the 1972 Montana Constitution safeguards the rights of a person from imprisonment for debt pursuant to Montana Constitutional provision article II, section 27.

## **LEGAL DISCUSSION:**

Title 15 MCA is entitled *Taxation*. Title 15, chapters 17 and 18 MCA provide the exclusive remedy for tax sales for nonpayment of taxes. The exclusive remedy state laws for tax liens and tax deeds is a civil procedure process that does not include criminal laws. There is no statutory provision in title 15, chapters 17 and 18 MCA that establishes any role for law enforcement officers wearing guns or law enforcement officers at all.

The statutory tax delinquency process is a civil process and procedure. Title 15, chapter 17 MCA is entitled *Tax Liens*. Title 15, chapter 18 MCA is entitled *Ownership Interests in Land Sold for Taxes*.

Article II, section 27 of the Montana Constitution states as follows:

“Section 27. IMPRISONMENT FOR DEBT. NO PERSON SHALL BE IMPRISONED FOR DEBT, except in the manner provided by law, upon refusal to deliver his estate for the benefit of creditors, or in cases of tort, where there is a strong presumption of fraud.” (*Emphasis added*)

The Montana Code Annotated Annotations for this provision of the Montana Constitution set forth in volume 1, at page 873 indicates that article II, section 27, quoted above is identical to the prior 1889 Montana constitution provision stating that no person shall be imprisoned for debt.

With respect to Article II, section 27 of the Montana Code Annotated, footnote cross references of potential interest with respect to any potential imprisonment for any reason include references to Montana state laws such as:

- (1) Arrest for defrauding creditors 27-16-102 MCA;
- (2) Fraud 28-2-404 through 28-2-406 MCA;
- (3) Nonsupport as criminal offense 45-5-621 MCA;
- (4) Endangering welfare of children by nonsupport 45-5-622 MCA.

There is no cross reference to any Montana State Law pertaining to a delinquent tax process or procedure in the footnotes to this Montana Constitutional provision. Montana’s tax delinquency laws do not provide for arresting any persons for tax delinquencies.

A civil attorney for the Missoula County Attorney’s office informs me that he has never heard of a scenario where law enforcement was involved in a civil property tax delinquency dispute. Further, he indicated that the “exclusive remedy” for non-payment of taxes is the tax lien/tax deed process set forth in title 15, chapters 17 and 18 Montana Code Annotated. He indicates that the process involving real property takes three years and very seldom results in issuance of a tax deed. A shorter process does exist for personal property that is not affixed to real property owned by the owner of the personal property.

A “property tax lien” or “tax lien” is defined in the Montana State law as meaning “a lien attached by the county for nonpayment of property taxes including penalties, interest, and costs.” 15-17-121(5) MCA.

Montana State law defines a “tax lien sale” as meaning “with respect to personal property, the offering for sale by the county treasurer of personal property on which the taxes are delinquent or other personal property on which the delinquent taxes are a lien.” 15-17-121(8) MCA.

Pursuant to section 15-17-911 MCA the county treasurer shall implement a statutory process for sale of personal property for delinquent taxes.

The civil attorney for the Missoula County Attorney’s office also indicates that Missoula County always errs to the benefit of the property owners to be able to redeem and retain their property. See *Zinvest, LLC. V. Missoula County Treasurer*, 2017 MT 188N, 389 Mont. 541, 400 P.3d 232

Further, he indicates that even after a tax deed is issued it is often necessary to initiate a civil proceeding that does not involve law enforcement in order to quiet title or initiate eviction proceedings if the property is occupied. He is not aware of anytime there has been a criminal offense charged for someone not vacating real property as a result of the rare process of a tax deed or nonpayment of delinquent taxes.

He indicated that a quick review of Missoula County records that he performed identified:

- (1) 2018 one tax deed thus far;
- (2) 2017 no tax deeds were issued;
- (3) 2016 3 tax deeds were issued.

City law enforcement has no role in the tax delinquency process. City police are not going to the residence of delinquent taxpayers for the sole civil procedure process to remove delinquent tax payers from their property for nonpayment of taxes.

**CONCLUSION:**

Yes, the 1972 Montana Constitution safeguards the rights of a person from imprisonment for debt pursuant to Montana constitutional provision article II, section 27.

OFFICE OF THE CITY ATTORNEY

/s/ Jim Nugent

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Jim Nugent, City Attorney  
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