

**County Commissioners—Right to Sell County Property
Otherwise Than at Public Auction.**

The Board of County Commissioners have no authority to sell county property except at public auction and at the time fixed by the published notice, except that the sale may be continued from day to day as long as necessary to sell all of the property.

J. E. Moore, Esq.,
Chairman Board of County Commissioners,
Bozeman, Montana.

My dear Mr. Moore:

You have requested my opinion as to the authority of County Commissioners to sell county property under the following circumstances:

"Certain real property was struck off to the county for taxes, and, not being redeemed, the county took a deed to same. The property was advertised for sale at auction, on a certain day "or any time thereafter," but not being sold on the date advertised, it is proposed to sell the property to any individual who may apply for same at any time after the advertised date upon tender of the amount of the taxes, penalties and charges against the property."

You inquire whether the Commissioners have authority to make such sale at such time.

The authority of County Commissioners to sell property to which the county has taken a tax deed is found in Section 2682 of the Revised Codes of 1907, as amended by Chapter 18 of the Laws of 1919, which reads as follows:

"Section 2682. Whenever the County has become the purchaser of any real estate sold for delinquent taxes, and the same has not been redeemed by the person entitled so to do, and the time for such redemption has expired, the Board of County Commissioners may, at any time, by an order made and duly entered upon the minutes of its proceedings, sell the same at public auction, provided, however, that no such sale shall be made or confirmed unless the price offered shall be sufficient to discharge all accrued taxes to date of sale, together with interest and costs, or that the price so offered shall be the reasonable market value thereof, in the judgment of said Board of County Commissioners, then the said Board is authorized to accept said price so offered, and the Chairman of said Board is authorized to execute a title therefor vesting in the purchaser all the title of the state and county to the real estate so sold. The money arising from such sale must be paid into the County Treasury, and the Treasurer must settle for money so received as other state and county money."

It is to be noted that no provision is made in the above section for advertising the auction. Section 2894, as amended by Chapter 15 of the Laws of 1919, Subdivision 10, gives authority to the County Commissioners to sell county property and makes provision for notice of sales of same, as follows:

"To sell at public auction at the court house door after thirty days' previous notice, given by publication in a newspaper of the county, or posted in five public places of the county, and

convey to the highest bidder for cash any property, real or personal, belonging to the county, paying the proceeds into the county treasury for the use of the county."

Under statutes practically identical with Subdivision 10 and Section 2682, above quoted, the Supreme Court of Nevada, in *Lyon County v. Ross*, 50 Pac. 1, held that the Commissioners were required to sell property to which the county had received a deed in the same manner that any other county property is sold, at public auction and after notice or advertisement as required by the section.

The word "auction" is defined by the *New Standard Dictionary* as "A Public sale of property in which the price offered is increased by bids until the highest bidder becomes the purchaser." *Bouvier's Law Dictionary* defines it as "A public sale of property to the highest bidder."

"Public Auction" is defined by *Black's Law Dictionary* as follows:

"Public Auction. A sale of property at auction, where any and all persons who choose are permitted to attend and offer bids. Though this phrase is frequently used, it is doubtful whether the word "public" adds anything to the force of the expression, since "auction" itself imports publicity. If there can be such a thing as a private auction, it must be one where the property is sold to the highest bidder, but only certain persons, or a certain class of persons, are permitted to be present or to offer bids."

Section 5122 of the Revised Codes of Montana of 1907 reads as follows:

"A sale by auction is a sale by public outcry to the highest bidder on the spot."

While not directly in point, inasmuch as the county has in the present case taken a deed to the property, it has been held in numerous cases that property sold for taxes must be sold at the time and place provided by law and set forth in the notice of sale. (See 45 *Century Digest*, Title Taxation, Sections 1347 and 1348, and corresponding sections in *Decennial Digest*, and also 37 *Cyc.* 1357.)

In *McLemere v. Anderson*, 43 So. 878, the statute required that tax sales should be made the first Monday in July and sale was made on the Thursday following the first Monday, the record containing no evidence of adjournment of the sale from day to day. The court held that the sale was void. In *Kennedy v. Sanders*, 43 So. 913, the statute required tax sales of certain classes of land to be held in February, and a sale made May 10th was held to be invalid.

The requirement of Subdivision 10, above, is that county property shall be sold "at public auction at the court house door after thirty days' previous notice." While it may be that the sale could be continued from day to day at least until each of the various properties advertised had been offered for sale, it would be going beyond the limits of the meaning of the word "auction" to hold the sale open continuously throughout the year.

There is no authority in the laws of Montana for selling property for taxes to which the county has taken a deed, upon a mere application to purchase at any time subsequent to the advertised date, accompanied by an offer of the amount of delinquent taxes and expenses; and in the absence of such authorization the County Commissioners have no power to hold the sale. Such would not be a sale at auction. Many of the States have statutes specifically authorizing the sale by the proper board, of any property to which a tax title has been acquired by the county, after same has been offered at auction, upon application and tender of the amount of the taxes with penalties, interest and costs; but Montana has no such statute.

It is, therefore, my opinion that the County Commissioners have no authority to sell property to which the county has taken a tax deed except at public auction, as defined by Section 5122, and in accordance with the provisions of Subdivision 10 of Chapter 15 of the Laws of 1919, and Section 2882, as amended by Chapter 18 of the Laws of 1919, and that such auction is limited to the time fixed by the published notice, except that the sale may be continued from day to day as long as necessary in order that all of the properties advertised may be offered for sale.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.