

Taxation—Tax Sales — Appraisers — Counties — County Commissioners.

When a county sells real property acquired through purchase at tax sales if the value thereof is reasonably in excess of \$100 the board may proceed to sell it according to the method provided in Chapter 162, Laws of 1929, without appraisalment by appraisers appointed by the district court. If, however, the reasonable value is less than \$100, appraisalment must first be had by appraisers appointed by the district court.

P. R. Heily, Esq.,
County Attorney,
Columbus, Montana.

December 12, 1929.

My dear Mr. Heily:

You request an opinion whether in the sale by the county of real property acquired by it through tax sales it is necessary to have appraisers appointed by the judge of the district court to appraise the property.

Prior to 1929, Section 2235, R.C.M. 1921, as amended by Section 3, Chapter 85, of the Laws of 1927, was the statutory authority for boards of county commissioners to sell real property obtained by a tax sale, and this was special legislation upon the subject. This law did not provide for the appraisal of the value thereof by appraisers appointed by the district court. The only provision therein contained relating to the value of the lands so sold was that no sale should be made at a price less than the fair market value of the property "as determined and fixed by the board of county commissioners at the time of making the order for sale, and which value shall be stated in the notice of sale." It will thus be observed that the board of county commissioners and not appraisers appointed by the court fixed and determined the value.

At the same time there was in effect Section 4465, R.C.M. 1921, as amended by Section 1 of Chapter 54, of the Laws of 1927, relating to the general powers of boards of county commissioners. Subdivision 10 thereof authorized the board to sell any property, real or personal, belonging to the county. If real property, it was required to be first appraised by appraisers appointed by the district judge and the sale could not be made for less than the appraised value fixed by the appraisers so appointed. The real property therein referred to was county property other than real property which had been acquired by it through tax sales for Section 2235, as amended, was special legislation upon the sale of real property acquired by tax sales and the method, terms and conditions therein stated governed in the sale of this particular class of property to the exclusion of those contained in Section 4465 as amended.

In 1929, the legislature, by Chapter 162, of the Laws of that year, again amended said Section 2235, relating to sales of unredeemed real property obtained by tax deeds, so that the same applies now not only to real property acquired through tax sales, but to personal property as well, and said chapter authorizes the sale thereof by the board of county commissioners in the manner set forth therein when the value thereof is in excess of \$100 and when the value is less than that sum, the said chapter provides that Subdivision 10 of Section 4465 and the amendments thereto shall be observed. When the value is more than \$100, the method provided in said Chapter 162 does not require an appraisal by appraisers appointed by the district judge, and evidently the legislature intended that the county commissioners should be the judge of the value as they were by the provisions of the section before its amendment.

In 1929 the legislature also sought to amend Subdivision 10 of Section 4465, as theretofore amended, by the enactment of Chapter 38 of said session laws, but this office in an opinion to George W. Padbury, Jr., Esq., county attorney of Lewis and Clark county, dated April 11, 1929, held that this chapter insofar as it attempted to amend said Subdivision 10, was unconstitutional because of defective title to the bill, copy of which opinion I enclose herewith. Therefore, any proceedings had under Subdivision 10 of said section should be in conformity with it as it

existed immediately prior to the enactment of Chapter 38, and without regard to said chapter. It will be observed, however, that by the proposed amendment contained in said Chapter 38, the legislature sought to do away with appraisals of real property by appraisers appointed by the district judge in all cases where the value is less than \$100. However, the proposed enactment having failed of its purpose because of the constitutional defect in title the said Subdivision 10, as it existed immediately prior to the enactment of said Chapter 38, still exists, and it is therein provided that real property sold by the county must be appraised by appraisers appointed by the district judge. As before stated, this subdivision did not apply to real property acquired by the county by tax deeds, but by virtue of the enactment of Chapter 162, of the Laws of 1929, it does now apply in cases where the value is less than \$100.

In determining whether a given piece of real estate acquired by the county by tax sales and deeds should be sold under the provisions of Chapter 162, Laws of 1929, or under Subdivision 10, of Section 4465, as amended (disregarding the attempted amendment by Chapter 38, Laws of 1929) the question to be determined is whether its value is more or less than \$100. Taking into consideration the fact that prior to the enactment of said Chapter 162, Laws of 1929, no appraisal was necessary by appraisers appointed by the district court when real property acquired by the county by tax sales was sold by it, and that the board of county commissioners was the judge of its value; and the further fact that had Chapter 38, Laws of 1929, been effective legislation, appraisers appointed by the district court would have been dispensed with in all cases where the value is less than \$100, it is apparent that the legislature intended that the board of county commissioners should, after the enactment of said Chapter 162, be the judge as to whether any particular property acquired by tax sales should be sold according to the method provided for in said Chapter 162, or according to the method provided in said Section 4465, and the valid amendments thereto.

If in the judgment of the board the real property that is contemplated by it to be sold is reasonably in excess of the value of \$100, then the board may proceed to sell it according to the method provided for in said Chapter 162, Laws of 1929. If, however, the judgment of the board is that the real property is reasonably of a value less than \$100 then (though it was not intended by the last legislature as is shown by the contents of Chapter 38, Laws of 1929, but which results from the failure of the legislature to observe the constitutional mandate when enacting said chapter) the board of county commissioners should apply to the district court to have the said real property appraised by appraisers appointed by the judge, and the board should proceed to sell it according to said Section 4465, as it existed immediately prior to the attempted enactment of said Section 38, of the Laws of 1929.

When the board takes action to sell any of the real property acquired by tax sale, in my opinion, it should record in its minutes its

determination as to the value of the property for the purpose of determining whether the proceedings shall be had according to the method prescribed in Chapter 162, Laws of 1929, or according to Subdivision 10, of Section 4465, R.C.M. 1921, and amendments thereto, but without regard to Chapter 38, Laws of 1929. Having once determined which method is properly applicable to any particular piece of property, the terms and conditions of the statute establishing the method are to be followed.

Very truly yours,
L. A. FOOT,
Attorney General.