

Taxation—Tax Deed Lands—Sale—Time—County Commissioners—Tax Deeds.

After a county acquires lands by tax deed county commissioners have a reasonable time within which to offer the same for sale. In the absence of extraordinary circumstances a period of more than one year after deeds are acquired would be an unreasonable delay. Opinion of county commissioners that delaying sale for a longer period would result in obtaining a higher price than 90% of the fair market value would not justify delay beyond that period.

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Gentlemen:

I have your request for an opinion relative to the right of the board of county commissioners of McCone county to postpone the sale of lands acquired by tax deeds. I have been informed that some of the tax deeds to the lands sought to be sold were taken by the county in the latter part of 1929, some during the year of 1930, and about thirty-five were taken between the 10th day of June and the 31st day of October, 1931.

In State ex rel. Mallott vs. Board of County Commissioners, 89 Mont. 37, the court said:

“While discretion is lodged in the board of commissioners as to what is the fair market value of these lands, as to the time of selling them, and as to whether they shall be sold for cash or upon terms, yet this discretion must be exercised in such manner as that a sale of these lands will be effected within such reasonable time, at such price, and upon such terms, as will on the whole best serve the interests of all parties concerned.”

In that case the opinion shows that more than one year had elapsed since the deeds were issued. (See page 57.) Owing to the peculiar circumstances which existed in that case, that is, the uncertainty as to what title would pass by a sale of the lands, the court refused to issue a writ of mandate, but as I understand the opinion, had it not been for this uncertainty concerning the title that would pass and the likelihood that no purchasers could have been found until the legal question had been determined the writ of mandate would have issued, and the court specifically said that since the legal question had been solved that it was the

duty of the board to proceed to sell the lands without any unnecessary delay. (See page 97.)

In view of what has been said above it would appear to me that the court deemed the lapse of one year from the time of taking tax deeds before the county offered to sell the land would be an unreasonable time to delay offering the lands for sale and that a writ of mandate would issue to compel them to offer the lands for sale where such a period of time had elapsed between the taking of the tax deeds and the application for the writ.

It would appear, therefore, that the McCone county commissioners could be compelled to offer the lands for sale that were acquired by tax deeds during the years 1929 and 1930. As to the lands acquired by tax deeds between June 10th and October 31st, 1931, it might be that the court would say as to them that the commissoiners had not deferred sale for such an unreasonable length of time as would warrant the issuance of a writ of mandate to sell them. However, if the court had the case before it involving all of these lands I doubt if it would order the writ to issue as to part and not as to the others for the object to be sought by such a writ would be to compel an effort by the board of county commissioners to expose the lands for sale in order to collect for the funds entitled to them, the moneys that are represented by delinquent taxes against the lands, and this is the main object of re-selling the lands—not to sell them at a profit. The lands cannot be sold for less than 90% of their fair cash value. If it was shown that this could be received at this time I do not believe that the court would hesitate to order the writ to issue as to all of the lands although some of them have not been held by the county for a period of one year.

Very truly yours,

L. A. FOOT,

Attorney General.