

Opinion No. 247.**Counties—Tax Deed Lands—Leases—
Grazing Districts.**

HELD: A county may lease land held on tax deed, to a grazing district, or an individual, for a term not to exceed three years, but such lease must be given subject to sale, or redemption by the original owner.

February 15, 1938.

Mr. Ward Goble
County Attorney
Baker, Montana

Dear Mr. Goble:

You have submitted the following questions:

"1. Can the board of county commissioners lease the county's land, acquired by tax deed, to grazing associations for a period of ten years?"

"2. Would land leased under this condition be subject to purchase by the original owner?"

Section 4465.27, which was enacted into law as Chapter 100, Laws of 1931, authorized the county to lease county lands for a period not to exceed three years, and subject to sale by the board. Section 2208.1, which was enacted into law March 7, 1933, authorizes the county to lease land for a period not to exceed five years, except lands to be, or within, a legally created grazing district, when such lease may run for a period of not to exceed ten years. No provision is set forth in said section subjecting said lands to sale. Chapter 66, Laws of 1933, enacted into law the same date as Section 2208.1, provides that any incorporated grazing association may purchase or lease any and all lands owned by the county not already leased, and located within the proposed district; such lease to be for a period

of five years, with the land thus leased not subject to sale to other parties, but with the privilege of purchase by the incorporated grazing district at any time during the term of the lease at such appraised price as shall be determined at or prior to the origination of the lease. Chapter 66, supra, was amended by Chapter 195 of the 1935 Session Laws, and that part of Chapter 195 as is applicable is found in Section 7364.13, and is as follows:

"Any incorporated grazing association may purchase or lease any and all lands owned by the United States, the State of Montana, any county, corporation or individual on such terms as may be lawfully negotiated in each case.

"In negotiating the terms of any lease with a cooperative grazing district, county commissioners may provide for a variable scale of rental charges, based on market prices for livestock and/or livestock products, or on the number and character of stock to be grazed in said district."

Chapter 152 of the 1937 Session Laws, which is an express amendment to Section 4465.27, authorizes the county to lease lands for a period not to exceed three years, and subject to sale by the board, save and except as to deposits of coal, or coal and the surface above the same, owned by any county, or to which any county has heretofore or may hereafter acquire title by tax title, tax deed or otherwise, which lease or leases may be for a period of ten years, and to run and continue as long thereafter as coal is being mined and extracted from the leased property in commercial quantities.

The various laws referred to herein, and particularly Section 2208.1, passed subsequently to the passage of Section 4465.27, and prior to the enactment of Chapter 152, supra, undoubtedly were in conflict with Section 4465.27, and modified and amended the same, in reference to the term of the lease and the proviso relating to the sale of the property. While Chapter 152, supra, is an express amendment to Section 4465.27, also being the latest enactment upon the subject, it also amends all statutes in conflict therewith, and Section 2208.1, being in direct conflict with Chapter 152, is amended and superseded, as well as any other statute in

conflict, so that now, and since the enactment of Chapter 152, all property of the county, whether acquired by tax deed or otherwise, must be leased subject to sale by the board, and no lease shall be for a period to exceed three years, save and except as to deposits of coal only, etc.

Further, I desire to point out that a taxpayer, whose property has been deeded to the county, may, at any time before a sale of the property is made to another person, redeem such property, and such lease as the board may enter into is subject to said right of redemption. So much of Section 2235 as is applicable provides:

"* * * Provided further that at any time before such sale, the taxpayer whose property has been deeded to the county may purchase such property by payment to the county of the full amount of the taxes, penalties and interest for which such property was sold and such purchase and payment may be effected by an installment contract with annual payments, as provided in Section 4465.9."

Although the land may have been acquired by the county for delinquent taxes, and acquired pursuant to Sections 2215.7 and 2215.9, which sections refer to the effect of the judgment, order, and effect of the deed, yet the tax deed or the deed taken pursuant to said sections by the county is subject to the right of redemption. The right of redemption of these tax deed lands by the taxpayer and original owner cannot be construed as in violation of Section 39, Article V of the Montana Constitution, which prohibits the postponement or remission of a liability or obligation, for the reason that the right of redemption is a new and independent obligation and is not a part of the original liability and obligation referred to by the constitutional provision. Redemption statutes must be liberally construed.

State ex rel. Bell v. McCullough, 85 Mont. 435;

Home Building and Loan Association v. Blaisdell, 290 U. S. 398 (Minn.).

Therefore, it is my opinion that Section 2208.1, as well as any other statutes in conflict, are amended by

Chapter 152, supra, and lands leased by the county to a grazing district or other person cannot be leased for a period of time exceeding three years, and are leased subject to sale, save and except as to deposits of coal only, etc., and prior to sale said lease is given subject to the right of redemption by the taxpayer whose lands were taken by tax deed by the county.