

Opinion No. 146.

Tax Deed Land—Repurchase.

HELD: The owner of property sold to the county for delinquent taxes may repurchase the same by paying the amount for which the property was actually sold to the county.

October 4, 1939.

Mr. R. H. Wiedman
County Attorney
Polson, Montana

My Dear Mr. Wiedman:

You have submitted to this office for my opinion the following questions:

May the owner of property which has been sold by tax deed to the county redeem (purchase) the same without the payment of penalty or interest? If redemption (purchase) is made must taxes be charged and collected subsequent to the time the county takes the tax deed?

Section 2235, R. C. M., 1935, as amended by Chapter 181, Laws of 1939, provides "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." Chapter 11, Laws of 1939, provides that "Any person having an equitable or legal interest in real estate heretofore sold for taxes to any county, or which has been struck off to such county when the property was offered for sale and no assignment of the certificate of such sale has been made by the county commissioners of the county making such sale or on which the taxes are delinquent for the first installment of the year 1938, shall be permitted to redeem the same by paying the original tax due thereon." If the taxpayer desires to purchase or re-acquire his property he may do so if he acts before sale by paying the amount for which the property was sold. If the county acquired a tax deed during the effective period of Chapter 11, delinquent taxes for the first installment of the year 1938 and prior thereto would not draw penalties and interest. In other words, the county would have purchased the property for the taxes without penalties and interest. Consequently, the taxpayer may repurchase the property

then acquired by the county by paying the amount of the original tax. The taxpayer by paying the original tax (without penalties and interest) would be paying the statutory amount to the county "for which such property was sold * * *." It will be noted that Chapter 70, Laws of 1937, being a tax moratorium law, became ineffective from and after December 1, 1938. Chapter 11 became effective February 7, 1939. If the county had acquired a tax deed between December 1, 1938, and February 7, 1939, it would have applied for and purchased the property for the amount of the delinquent tax, penalties and interest. Repurchase by the original owner and taxpayer of the property then acquired by the county will require payment of the tax, penalties and interest in the amount for which the same was acquired by the county.

If the county acquired tax deed to the property no subsequent taxes should be authorized or levied thereon. Taxes could not accrue against property owned by the county. Furthermore, Section 2235, as amended by Chapter 181, supra, expressly provides that the taxpayer may re-acquire by purchase his property at any time before sale by paying the amount for which the property was sold. If the taxpayer was required to pay taxes arising subsequent to the issuance of the tax deed, such requirements would be in derogation of the expressed provisions of said statute.