

**Void Tax Deeds, Manner by Which Same May Be Validated.
Tax Deeds, Void, How Validated.**

Tax deeds heretofore issued which have been declared void by the Supreme Court may be treated as if no deed had ever been issued, and the County Treasurer should serve written notice, as provided by Sec. 2651, Revised Codes, and if the property is not redeemed the treasurer should then execute a new deed to the county upon the form heretofore prepared by the Attorney General.

Helena, Montana, November 2, 1909.

Hon. D. M. Kelly,
County Attorney,
Boulder, Montana.

Dear Sir:—

I am in receipt of your letter of October 30th, containing form of county treasurer's certificate of tax sale heretofore used in your county and which was called for by us to assist us in rendering an opinion upon the question heretofore submitted by you as to what procedure, if any, could be followed to validate tax deeds heretofore issued to the county on the form of deed declared void by our supreme court in the case of *Rush v. Lewis and Clark County*, 36 Mont., 566, 37 Mont. 240.

This certificate of tax sale should be amended so as to more fully recite the manner of conducting the sale; that is, it should contain a recital to the effect that the county treasurer first offered the delinquent property at public auction in front of the county treasurer's office to the person or purchaser who would take the least quantity or smallest proportion of the property and pay the taxes, costs and charges due, and if no person or purchaser offered to take any quantity or portion of said property or the whole thereof and pay such taxes, costs and charges, then the certificate should further show that thereafter and on the —— day of ——, the county treasurer again offered said property for sale in front of the county treasurer's office and that no person or purchaser offered to take the same and pay the taxes, costs and charges, and that the whole amount of the property assessed was struck off to the county of ——, as the purchaser thereof.

The above suggestions are for the purpose of correcting the certificates of tax sale to be used in the future.

However, the present form of certificate of tax sale deeds recite that the property was sold in the manner provided by law, and while it does not contain the recitals mentioned above, in our opinion the county could treat the deed heretofore issued on the form declared void by the supreme court as void and of no effect and proceed as if no deed had ever been issued on such certificate of tax sale; therefore, the county treasurer should again serve a written notice in the manner provided by section 2651 of the revised codes to the effect that he would make application for a deed at the expiration of thirty days from the date of service

of such notice, and if the property is not redeemed, then the treasurer should proceed to execute a new deed to the county upon the form recently prepared by this office and furnished to the various counties of the state. This seems to be the only procedure that can be followed. In our opinion such a deed, although based upon the form of certificate of tax sale heretofore used would be sufficient to convey title to the county.

Very truly yours,
ALBERT J. GALEN,
Attorney General.