

Tax Deed, Cancellation of by County Commissioners. County Commissioners, Authority Concerning Void Tax Deed.

Where the county has purchased property at a tax sale, and the deed executed pursuant thereto is void on its face, the county commissioners have no authority to cancel such deed, but may, upon a tender by the owner of the property of the taxes theretofore assessed, execute a quit claim deed of the county's right, title and interest to such party.

Helena, Montana, February 20, 1909.

Hon. W. L. Ford, County Attorney, White Sulphur Springs, Montana.

Dear Sir:

I am in receipt of your letter of the 10th inst., enclosing an opinion rendered by Messrs. Gunn & Rasch, concerning a certain tax deed issued

to the county of Meagher, in which they hold such tax deed to be null and void. You request an opinion upon the question of the power to the Board of County Commissioners to cancel a void tax deed upon the payment of taxes due upon the property conveyed by such deed.

We know of no law which gives the County Commissioners the power to cancel a void deed. However, if the commissioners are satisfied from the decisions of the court construing similar tax deeds that the deed is void, and the person owning the property is willing to pay the taxes assessed against the property, then in our opinion the commissioners would have authority to execute to such person a quit claim deed of all the right, title and interest of the county in and to such property in consideration of his paying the taxes theretofore assessed against the property.

If the deed in question shows on its face that several non-contiguous parcels of property were sold en masse or shows that the county was a competitive bidder so as to bring the deed within the principles of law laid down in the case of North State Land & Title Co. v. Billings Land & Trust Co., 36 Mont. 356, and Rush v. Lewis and Clark County, 36 Mont. 566, then the proper thing for the county to do is to accept the taxes from the party owning the land and execute a quit claim deed, as this will save the cost of litigation which would result in having the deed to the county set aside.

In executing such a deed, I would suggest that you recite therein that, whereas the deed is void for certain reasons, which you should set out in the deed; and, whereas the owner of the property has tendered the taxes actually assessed against the property, that, therefore, in consideration of such premises the county executes the deed in question.

Very truly yours,

ALBERT J. GALEN,

Attorney General.