

**Voter, Legal, Who Is, as Taxpaying Freeholder—Freeholder, Taxpaying, When a Voter.**

The purchaser of land under contract providing that title does not vest until payments are completed, is a freeholder in the State of Montana.

August 18, 1920.

Mr. M. L. Parcels,  
County Attorney,  
Columbus, Montana.

Dear Sir:

This is in answer to your letter of July 8th in which you ask for an interpretation of the phrase "the legal voters of said district who are taxpaying freeholders therein", found in Section 1, Chapter 93, Laws of 1917.

Chapter 93 of 1917 provides that whenever the board of trustees of any school district deem it necessary to raise money by taxation in excess of the ten mill levy allowed by law for any purpose in connection with the school affairs of said district, such question shall be submitted "to the legal voters of said district who are taxpaying freeholders therein, etc."

You state in your letter of inquiry that you have a large number of residents in your county whose title to the land which they hold is an equitable one arising under and by virtue of a contract for deed by which they have agreed to pay for their land in deferred installments the legal title to be transferred upon the completion of their contract. You wish to know whether such persons are legal voters under the law above specified.

There is no question but what the persons referred to are taxpayers. The question is whether they are freeholders. At common law an estate in lands signifies such an interest as the tenant has therein. (Book 11., Blk. Com. c. 8, 103.) Section 4485 of our Code of 1907 provides that estates of inheritance and for life are freehold estates. Freehold estates at common law were either of inheritance or not of inheritance. Those of inheritance were either absolute of such as had conditions attached to them. The conditional estates depended upon condition precedent or subsequent. (id p. 104.) Freehold estates not of inheritance were such as were limited by the life of the tenant or the life of some other person and were known as life estates. All freehold estates depended upon and required what was known as livery of seisin. This was a ceremony which in its nature meant a full and complete delivery of the possession of the land in the presence of witnesses. (id c. 8, p. 120; Coke on Litt. 42.) This ceremony has been supplanted by the use of written documents to-day known as deeds. It will be seen, therefore, that Section 4485 of our Code is merely an announcement of the common law as defined by Blackstone and Coke.

At common law the purchase of a tract of land with immediate possession thereof by the purchaser and conditioned that the absolute title should not vest until certain payments were to be made in the future,

created what is known as an estate upon condition precedent. This also is true under the law as it exists to-day. In Volume 16 of the American Digest, Century Edition, under the title of Descent and Distribution, at Section 36, will be found a long list of American decisions holding that a contract for the purchase of land on deferred payments and under which title is withheld until all payments are completed, vests and equitable interest in the land to the purchaser. The equitable interest thus vested descends direct to the purchaser's heirs. The deferred payments under the contract must be made by the administrator out of the personal effects of the estate. A further list of cases in support of this proposition is found in Volume 8 of the Decennial Edition of said Digest, under the same title, Section 8.

It is, therefore, my opinion that the purchaser of a tract of land upon deferred payments with the condition that title shall not vest until the payments are completed is a freeholder in the state of Montana. If, as you say, he pays taxes upon such land under the terms of his contract, he becomes a taxpaying freeholder within the meaning of Chapter 93, Laws of 1917, and is entitled to vote under said statute. In this connection I want to call your attention to the fact that he must have the further qualifications found in Sections 462 and 469 of the Political Code which apply generally to any elector.

Respectfully,

S. C. FORD,

Attorney General.