

Tax Sales—County Commissioners—Refunds.

Tax sales are strictly statutory proceedings and statutes prescribing conditions precedent must be strictly followed. Tax sale by county of realty previously sold to county at tax sale within thirty-six months is invalid. County commissioners are without power to refund money paid to county at invalid tax sale until such invalidity has been established as provided in Chapter 131, Laws of 1927.

H. O. Vralsted, Esq.,
County Attorney,
Stanford, Montana.

August 6, 1929.

My dear Mr. Vralsted:

You have requested the opinion of this office with reference to the following facts:

During 1923, 1924 and 1925, Judith Basin county sold real estate and bid in the property for taxes due. There was no redemption and the property was again sold in 1926 to an individual who purchased the tax certificate. In 1927 the taxes being again delinquent the county purchased the tax certificate of 1927. Under these facts you ask the following questions:

“1. Where the county has bid in the property at a tax sale and the same remains unredeemed, is the subsequent sale thereof by the county legal, as, for instance, the tax sale for the year 1926 above referred to?”

The tax sale of 1926 was valid as to property purchased by the county at the tax sale of 1923 if the sale was made after thirty-six (36) months had elapsed since the 1923 sale, and if said 1926 sale was made upon the order of the board of county commissioners. Section 2231 R.C.M. 1921, provides that where the county is the purchaser the land is assessed as usual but is not exposed for sale until the period of redemption (36 months) has expired, and only then upon an order of the board of county commissioners directing such sale.

In my opinion the sales of 1924, 1925 and 1926 are invalid if they were of property previously purchased by the county within 36 months of the said sales, or if the sale was made without an order of the board of county commissioners. The proceedings antecedent to a tax sale of real estate are creatures of the statute.

The power to sell real estate does not exist unless expressly conferred by statute.

McQuerney vs. Reed, 23 Iowa 410;

Sibley vs. Smith, 2 Mich. 486;

Sharp vs. Speir, 4 Hill (N.Y.) 76;

Beaty vs. Knowlder, 4 Pet. (U.S.) 152, 7 Law Ed. 813.

For the reason that tax sales are exclusively statutory proceedings the statute granting the power of sale must be strictly followed. The officer making the sale sells something which he does not own, and which he can have no power to sell except as he is made the agent of the law for the purpose. But his agency is dependent upon certain steps and conditions precedent which are, under the law, conditions upon his authority. If one step or one condition precedent fail it is as fatal as if all failed, and conditions to a statutory authority cannot be aided by the courts.

Lyon vs. Alley, 130 U.S. 177, 32 Law Ed. 899;

Eastman vs. Gurrey, 15 Utah 410, 49 Pac. 310.

Where tax sales are under consideration a fundamental condition to their validity is that there should have been a strict compliance with the law in all proceedings of which the sale was the culmination. (Preston vs. Hirsch, 5 Cal. App. 485, 90 Pac. 965).

"2. If such subsequent sale was illegal is it within the power of the county commissioners to declare such sale illegal and refund to the purchaser the sum paid, together with 8 per cent interest thereon, or must the same be adjudicated as provided by Chapter 131, Laws of 1927?"

The power of the board to refund moneys must emanate from statute. Aside from Chapter 131, Laws of 1927, Section 2222 R.C.M. 1921, is the only statute which would tend to grant such authority. However, a similar statute in California has been held by that court not to apply to cases of this kind.

Brooks vs. County of Tulare, 49 Pac. 469;

Coleman vs. County of Los Angeles, 182 Pac. 440.

It was held that until the enactment of a statute somewhat similar to our said Chapter 131, Laws of 1927, there was no way that a purchaser of property at a tax sale could reclaim money from the county which he had paid as a consideration for the purchase even though said tax sale was illegal.

Our Supreme Court has evidently recognized this rule in Larson et al. vs. Peppard, 38 Mont. 128, where the court said that the purchaser at a delinquent tax sale is subject to the rule of *caveat emptor*. Therefore, it would appear that the said Chapter 131, Laws of 1927, is the only source of power for the board of county commissioners to refund money thus received because of irregular delinquent tax sales. This act, however, provides for the refunding of the money only after the fact that the certificate is void has been determined by the court. It therefore appears that the judgment of the court that a tax certificate is void is jurisdictional to the right of the board of county commissioners to make a refund.

"3. Upon a redemption, has the county treasurer the right to pay over a part of the redemption money to the holder of the tax sale certificate for the year 1926, or does the purchaser stand to lose the amount paid therefor?"

It is my opinion from what has been said hereinbefore that the county treasurer would not have the right to pay over a part of the moneys received by redemption from the sales, for which the county holds certificates of purchase, to the holder of the tax sale certificate for the year 1926 (if said sale for 1926 is void), but if the said sale is declared void by a court the county can refund to the purchaser the moneys in accordance with the terms of Chapter 131, Laws of 1927.

Very truly yours,

L. A. FOOT,
Attorney General.