

**Taxes—Lands—Tax Sales.**

Under circumstances stated in opinion assessment of land and sale thereof was valid.

S. J. Rigney, Esq.,  
County Attorney,  
Cut Bank, Montana.

October 18, 1930.

My dear Mr. Rigney:

You have requested my opinion on the following question relating to real property acquired by the county through application for tax deed under the following circumstances:

“The land was originally Indian land and the patent to the

same issued to David LaBreche and Minnie LaBreche. As you will see, they were each an owner of an undivided half interest in the aforesaid described lands but said patent was never filed; it was allotted to James LaBreche who died and assessment was made in the name of James LaBreche estate.

“The lands were first assessed for taxes for the year 1922 in the name of James LaBreche Estate. It became delinquent for the taxes for the years 1922, 1923, 1924, 1925, 1926, 1927 and 1928. Under the orders of the board of county commissioners the county clerk and recorder was ordered to apply for a tax deed to this property and the notice of application was made during the year 1929, and subsequently the tax deed issued to the county on June 3rd, 1929, more than a year ago.

“The land was not assessed during 1929 but during 1930 was appraised and offered for sale at public auction. At the time the property was being sold at public auction and prior thereto it was called to the notice of the board of county commissioners that the application for tax deed had been served upon David LaBreche but had never been served upon Minnie LaBreche. Accordingly, at the time the land was sold instead of the county selling all of its right, title and interest in this land it merely sold an undivided one-half interest, going on the theory that it had merely acquired the interest of David LaBreche. David LaBreche and Minnie LaBreche were heirs of James LaBreche and patent issued to them.

“Since that time Minnie LaBreche or her assignees have seen the board of county commissioners and requested that the board of county commissioners quit-claim any right, title, and interest that it might have in this land to Minnie LaBreche in consideration of Minnie LaBreche and her assigns paying to the county the total amount of all delinquent taxes and penalties, and interest up to the year 1928, and in addition thereto an estimated amount for the year 1929. They base their right upon the following grounds, to-wit: David LaBreche and Minnie LaBreche were each the owner of an undivided half interest and that since Minnie LaBreche was not given notice of application for tax deed that she still has the right to redeem. That in redeeming, however, she would have to pay all of the taxes and make settlement with her co-owners.

“The question which we wish you would advise us upon, as you will see, is whether or not under these facts the county commissioners have a right to quit-claim to Minnie LaBreche and her assigns any right, title and interest that they might have in these lands in consideration of the payment of all outstanding taxes. In other words, has the county good title under its deed?”

Section 2014, R.C.M. 1921 provides as follows:

“The undistributed or unpartitioned property of deceased persons may be assessed to the heirs, guardians, executors, or administrators, and a payment of taxes made by either binds all the parties in interest for their equal proportions.”

From the foregoing provision it is my opinion that the property in question was properly assessed and that the notice of application for tax deed was sufficient. (See *Hill vs. Lewis and Clark County*, 54 Mont. 479.) In any event any action to set the same aside is now barred by the statute of limitations. (Section 2214, R.C.M. 1921 as amended by Chapter 83, Laws of 1927.) I am, however, doubtful of the county's right to sell an undivided half interest in the land as was done in this instance as I find no statutory authority for such procedure. It is not necessary to decide this question, however, for the reason that since the county has secured a tax deed to all of the land in question it can now only be disposed of by sale in the manner provided by law and therefore the county would have no right to quit-claim as requested. It would appear to me that as the party interested in obtaining the undivided interest still in the name of the county is one and the same party who purchased the undivided half interest from the county that he should deed this interest back to the county and have his money returned and then have the entire tract again offered for sale in accordance with the law.

Very truly yours,

L. A. FOOT,  
Attorney General.