

Taxation—Counties—Sale—Tax Lands.

County offering for sale 38,000 acres of land acquired by tax deeds should offer each tract separately before offering the same for sale as one block.

Mr. Homer A. Hoover,
County Attorney,
Circle, Montana.

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My dear Mr. Hoover:

I have your request for an opinion. I have given the matter considerable attention and have devoted quite a little time to looking up cases which would throw some light upon the subject but it seems that there are not many cases to be found which are of any value, due, I presume,

to the fact that these matters are purely statutory and each state has its own peculiar laws upon the subject.

There can be no doubt that the purpose of our statutes is to expose property acquired by tax deeds to sale at public auction. This is plain enough. Nothing is said about the maximum price but the law does fix the minimum price for which the property can be sold. However, I take it that the purpose of exposing property to public auction is to acquire the best price that can be obtained for the property. The provision that the property must not be sold for less than 90% of the appraised value is a restriction on the power to sell. It fixes the minimum price at which the property may be sold. The statute does not say that the property shall be sold at the appraised value but it permits it to be sold at any price above 90% of the appraised value. The sale, however, must be at public auction unless it has been previously offered and could not be sold, and I have no doubt that the purpose of the requirement that the property be exposed to public sale is not merely to afford a means of selling it at the appraised value but through competitive bidding to receive the best price obtainable for the property. I do not think this means necessarily the highest price because it might be that a cash purchaser's bid would be more advantageous to the funds represented by the delinquent taxes than would be the higher bid of a purchaser who could pay only part of the purchase price, the remainder to be paid over a period of years.

It would be a matter for the county commissioners to determine in their sound discretion as to whether or not the cash bid under such circumstances, though lower than the bid of the purchaser seeking to purchase on deferred payments was the best bid from the viewpoint of the funds that would be benefitted thereby.

The county's proposal is to have approximately 38,000 acres of lands which it has acquired through tax proceedings appraised in the separate tracts as it came to the county and then expose all of these various tracts to sale as one block though, of course, they are not in one solid tract, and to receive no bids except for the whole of the lands. It seems to me that this procedure is fraught with the danger that it will shut out competitive bidding by persons who, were they permitted to bid upon the separate tracts, might become the purchasers thereof at the sale. I understand that one outfit is willing to purchase all of the lands at the appraised value if that appraised value does not exceed 50c per acre. I also understand that the appraisers appointed by the court will appraise each tract separately as it came to the county though the separate tracts will not be exposed for sale, the intention being to offer the entire 38,000 acres as one tract of land.

It is readily conceivable that if the tracts were offered separately many persons might bid for separate tracts but if they must bid for 38,000 acres or none they would be precluded from bidding because they have no use for 38,000 acres or they are not financially able to purchase such a large tract. It seems to me that with these bidders shut out the sale at public auction is a matter of form only and that it is in fact but a private sale, especially in view of the fact that in your case such an

arrangement is being made to afford a known prospective purchaser an opportunity to acquire the whole of the property at a price he is willing to pay.

I also understand these 38,000 acres of land lie in several school districts. The law provides that the funds derived from the sale of tax lands must to the extent that the various state, county, school district and other municipal corporation funds are represented by taxes against them, be credited to those funds, any surplus to be credited to the general fund of the county. The lands in one school district may be more valuable than in another and while this value might be reflected in the appraisal, nevertheless, if these lands were sold separately they might, because of their greater value, sell in excess of the appraised value. If so, it is plain to be seen that that school district would be at a disadvantage under the proposed scheme which would eliminate separate bids for the lands within that district, leaving them to be sold with other lands at only their appraised value.

If the delinquent taxes in that district exceeded the appraised value but were less than the amount for which the lands could be sold separately the school district, if they were sold separately, would receive its taxes in full as well as would the state and the county and there would be left over a residue to be covered into the general fund. If the lands were sold, however, under the proposed arrangement at only their appraised value, then the district would receive only a part of its taxes as would also the other funds and the general fund would be deprived of what otherwise would go into it from the sale of said lands.

Even in the same school district some funds might be made to suffer a loss if the lands were sold as proposed; for instance, one tract of land might have against it hail insurance taxes or livestock taxes. For one reason or another this may be a desirable piece of land and if offered separately would bring more than enough to discharge all the taxes against the land. In such a case the state would receive those taxes in full. However, if through the proposed arrangement the land can only be sold for the appraised value then the state's hail and livestock taxes would only be proportionately paid and thus those funds would suffer through the proposed arrangement.

Another feature of this question is that it is proposed to appraise the lands in separate tracts, that is, the value of each tract will be ascertained as a separate and independent piece of land while the sale is proposed to be not of each separate tract but of the whole of them as one unit. Thus the lands will not be offered for sale so as to permit a purchaser to bid according to the value that each separate tract has independent of the other tracts but the purchaser would bid what he deemed was the value of the tract as a unit, disregarding the elements that were considered in making the appraisal of each tract.

The law which provides that no sale can be made for less than 90% of the appraised value means apparently the value which the land, as appraised, has; that is, in this case it would mean the value that each separate tract has, independent of the others. By selling the lands as a unit for a single price instead of the separately appraised tracts at sepa-

rate prices there is no method by which it can be determined that the total selling price equalled or exceeded the minimum for which the separate lands are authorized to be sold, namely, at least 90% of their appraised value. The fact that the total purchase price equalled the aggregate of the appraised values of the separate tracts does not mean that each tract was sold for at least 90% of its appraised value—that would only be an assumption for the purpose of distributing the taxes. Neither could it be said that each tract of land had been sold at the best price obtainable therefor as there is no way of determining just how much of the purchase price was paid for each separate tract nor how much certain tracts would have brought had they been sold separately.

Perhaps the safest way would be to offer each tract separately and then offer each tract again but restricting the bidding to those who will bid upon each and every tract of land offered for sale. If it then develops that the person bidding on each and every tract of land has made the best bid for each tract of land his bid could be accepted, but should his bids on some of the tracts be inferior to those which were made when the lands were first offered separately to bidders who were not required to bid on all of the lands then the county would not be justified in awarding him the entire tract as to do so would sacrifice the interest of those funds which are interested in the lands for which a better bid was made. He could be awarded the remainder of the lands if he desired to purchase them (his being the best bid therefor) or his entire bid could be withdrawn by him, it being understood that at the time he was making the bids they were conditioned upon their being accepted as to all of the tracts offered for sale. In this way the sale would determine the best bid obtainable for the separate tracts as appraised and also as a unit and it would be established how much of the purchase price was paid for each tract of land and no fund would suffer because any lands sold, whether only part of them or all of them, would be sold for the best price obtainable for each separate tract. Also this method would preserve the competitive bidding which the statute contemplates so that the sale would be really a public and not a private one.

Very truly yours,

L. A. FOOT,

Attorney General.