

Tax Sales — Taxation — Irrigation Districts — Lands — Purchase.

Section 10 of chapter 100, laws of 1931, is applicable to the sale of lands acquired by tax deeds.

An irrigation district may purchase lands from the county acquired by tax deeds where the irrigation district has delinquent taxes or assessments against the lands.

Section 2 of chapter 89 of the laws of 1925, rather than section 6 of said laws, prescribes the manner and conditions under which such purchase shall be made. The right of the district to purchase is an absolute right to be exercised in its discretion and the county has no option except to convey the lands to the district.

Miss Emma Madeen,
County Attorney,
Hamilton, Montana.

March 3, 1932.

My dear Miss Madeen:

You have requested an opinion upon the following questions:

“1. Can unredeemed land be sold by the county commissioners under the provisions of section 10, chapter 100, of the session laws of 1931, the board of county commissioners being therein given the power to sell any property, real or personal, however acquired?”

In answer to this question I enclose a copy of an opinion rendered to county attorney F. S. P. Foss, Glendive, Montana, under date of March 18, 1931, from which you will observe it has been held by this office that subdivision 10 of section 1 of chapter 100 of the laws of 1931, amending section 4465, R.C.M. 1921, is applicable to the sale by the county commissioners of property acquired through tax sale proceedings.

“2. If such sale can be made, can irrigation districts, under the provisions of section 6, chapter 89 of the session laws of 1925, become a purchaser of such lands when sold by the county at private sale under the provisions of section 10, chapter 100 of the session laws of 1931?”

In answer to your second question, will say that under the provisions of section 2 of said chapter 89 of the laws of 1925, rather than section 6

of said laws, an irrigation district is specifically authorized to purchase lands from the county which have been acquired by the county through tax sale proceedings and where the delinquent taxes for which the land was sold to the county and for which it procured a tax deed, included in whole or in part, assessments by an irrigation district.

In such case it is provided by said section that the irrigation district, if it purchases the lands from the county, must pay to the county treasurer of the county all state, county, city, school district and other delinquent taxes, together with penalty, interest and costs of publication and sale, and the payment shall be made out of the revolving fund of the district and upon such payment the county shall convey the lands to said district.

This right of the irrigation district to purchase such lands is expressly reserved in chapter 162 of the laws of 1929 relating to the sale of tax deed property acquired by the county. Though some of the provisions of said chapter 162 have yielded to subsection 10 of section 4465, R.C.M. 1921, as amended by chapter 100 of the laws of 1931, it is my opinion that the provisions of section 2 of said chapter 162 of the laws of 1929 preserving the right of the irrigation district to purchase such lands have not been rendered ineffective by the amendment of said subdivision 10 of section 4465, R.C.M. 1921.

In my opinion, the right of the irrigation district to purchase such lands upon tendering payment in the amount prescribed by said section 2 of chapter 89 of the laws of 1925 still exists and is an absolute right to be exercised in the discretion of the irrigation district and where such right is exercised the county has no option except to convey the lands to the irrigation district. In such cases the exercise of the right by the irrigation district would prevent the county from exposing the property to sale under subsection 10 of section 4465, R.C.M. 1921, as amended, or under any of the provisions remaining intact of chapter 162 of the laws of 1929. Of course, unless the district exercises its right the lands would be subject to sale by the county under the above last mentioned laws.

Yours very truly,

L. A. FOOT,
Attorney General.