

Opinion No. 103.

**Taxation—Tax Deed Land, Sale of—
Federal Government, Sale of Lands
To—County Commissioners.**

HELD: 1. County commissioners may sell tax title land to the United States Government even though such sale takes the land off the tax rolls of the county.

2. Sales of large tracts of land at a fixed price per acre do not fix the future valuation of farm lands for taxation purposes.

May 15, 1935.

Mr. Fred C. Gabriel
County Attorney
Malta, Montana

This will acknowledge receipt of your letter of May 2, and of your letter of April 11, enclosing copy of your opinion to the Board of County Commissioners of Phillips County, upon the following questions:

"1. Can we as county commissioners sell approximately 310,000 acres of tax land to the United States Government and thus take that land off the tax rolls of the county?

"2. Would we be warranted in obtaining tax title to all delinquent tax lands in the county, approximately 690,000 acres and sell it to the United States Government?

"3. How should the transaction be handled?

"4. It has been represented to us that the county under the Taylor Act will receive one-half of the rentals of the land, if we sell to the Government. Does the law assure us of this revenue?

"5. What will be the effect should we sell this land for \$1.00 or \$1.25 an acre to the U. S. Government, upon the office of the assessor of Phillips County, and this valuation upon future farm lands for taxation purposes?"

You have requested us to render an opinion from this office concerning the same questions.

1. As long as the procedure and terms of the sale comply with the provisions of the laws of this state,

(see Chapter 65, Laws of Montana, 1933) we know of no inhibition, constitutional, statutory or otherwise, which forbids such a transaction. Clearly the sale may be made to a private person or corporation and there is nothing in the law, that we have been able to find, which forbids the sale of lands acquired by a county through tax sales to the United States Government. The fact that such a sale will result in taking a large area of land from the tax rolls and perhaps affect the total taxable valuation of the county, is of no consequence. (*Rudacille v. State Commission on Conservation, Etc.*, 156 S. E. 829; *Collings v. Big Horn County*, 20 Wyo. 517, 126 Pac. 465; *Keatley v. Summers County Court*, 70 W. Va. 267, 73 S. E. 706, Ann. Cas. 1913E 523 and note thereto; *Franzke v. Fergus County*, 76 Mont. 151, 245 Pac. 962; 15 C. J. 538; 59 C. J. 166; 61 C. J. 1234; see also Vol. 15 opinions Nos. 204 and 388.)

2 and 3. Questions No. 2 and 3 involve matters of policy which must be decided in the wisdom of the board of county commissioners and as presented do not raise questions of law which would be proper subjects for an official opinion of this office.

4. Answering your fourth question, Section 10, 48 Stat. 1273, 43 U. S. C. A. 315 i, Chapter 865, approved June 28, 1934, known as the Taylor Grazing Act, provides in part:

"* * * 50 percentum of the money received from each grazing district during any fiscal year shall be paid at the end thereof by the Secretary of the Treasury of the State in which said grazing district is situated, to be expended as the State legislature may prescribe for the benefit of the county or counties in which the grazing district is situated: Provided, that if any grazing district is in more than one state or county, the distributive share to each from the proceeds of said district shall be proportional to its area therein."

It will be seen that by the express language of the Taylor Act, 50 percentum of the money received from each grazing district is appropriated by the Federal Government to the States. The legislature of this state has appointed the State Treasurer as

custodian of all funds thus received and he is directed to apportion and allocate these moneys to the county treasurers, who, in turn, are required to credit 50% of the amount received to the general fund and 50% to the common school fund of the county. (Chapter 146, Laws of Montana, 1935.)

However remote it may be, there is always a possibility, as you have pointed out, that subsequent sessions of the Congress of the United States and of the Legislative Assembly of this State may amend or repeal these enactments but until that has been done, the fourth question presented must be answered in the affirmative.

5. Answering the fifth question, you have suggested to the board of county commissioners that the sale price of such a large tract of land would fix the value of all land in the county of that kind and character because of the provisions of Section 1 of Article XII of the Constitution of the State of Montana.

With such a suggestion we cannot agree. Section 2001, R. C. M. 1921, requires the assessment of all taxable property "at its full cash value." Section 1996, R. C. M. 1921, defines the terms "value" and "full cash value" as "the amount at which the property would be taken in payment of a just debt due from a solvent debtor." And while it is true that the sale price of adjoining lands of like character may be an element to be considered in determining value, such price is not conclusive especially when the amount received is from a forced sale such as a tax sale and especially when a large tract is sold in a single sale to the Government of the United States, which could, if it wished, acquire title to such lands in an eminent domain proceeding. (*James et al. v. Speer*, 69 Mont. 100, 220 Pac. 535; *State et al. v. Hoblitt et al.*, 87 Mont. 403, 288 Pac. 181; *State v. Stewart*, 89 Mont. 257, 297 Pac. 476; *Kohl v. United States*, 91 U. S. 367, 23 L. Ed. 449; *United States v. Gettysburg Electric Railway Co.*, 160 U. S. 668, 16 Sup. Ct. 427, 40 L. Ed. 576; see also opinion No. 21.)