

May 31, 1935.

Mr. H. R. Bjorklund
County Clerk and Recorder
Glasgow, Montana

We are in receipt of your letter of May 27, enclosing copy of contract. You inquire relative to the termination of such contract and resale of the property to the United States Government. You do not cite any statute and it is ordinarily the rule of this office to require matters of this character to be submitted by the County Attorney.

The contract enclosed appears to have been executed under the provisions of Section 2235, Revised Codes of Montana of 1921, as amended by Chapter 85 of the Laws of 1927, or Chapter 162 of the Laws of 1929, or Chapter 33 of the Laws of the Extraordinary Session of 1933. None of these statutes appears to have any special provisions in relation to the termination of contracts after sale and when the vendee is in default. Therefore, the general principles of the law in relation to vendor and vendee would apply. Probably many of the principles in relation to waiver would not apply as a purchaser from the county is not entitled to all the privileges and rights of a purchaser from an individual. The law is discussed generally under the subject of Vendor and Purchaser in 66 C. J.

There have been a great many decisions by the Supreme Court of this State in relation to cancellation to real estate contracts. In the case of *Fratt et al. v. Daniels-Jones Co. et al.* 47 Mont. 487, at page 499, the court says:

"But counsel fail to discriminate between a contract like the one now under consideration, by the very terms of which the failure to pay an installment when due *ipso facto* ends the contract, and one which provides that upon the failure of the vendee to make payment on time, the vendor shall have the right to declare the agreement at an end, time being expressly made of the essence of each contract. Recalling that this last provision is for the benefit of the vendor, the difference in the two classes of contracts becomes manifest at once. Under an agreement of the first class the

Opinion No. 112.

Counties—County Lands—Contracts for Sale of—Notice of Termination of Contract.

HELD: 1. The general principles of law in relation to vendor and vendee would apply to contracts for the sale of land by the county under Sec. 2235, R. C.M. 1921, as amended by Chapter 33, Laws of the Extraordinary Session, 1933-34.

2. Upon failure of the vendee to make payments, where time is made of the essence of the contract, a notice should be given to each purchaser that his rights have terminated, or, if required, that his rights will terminate on a certain date.

breach by the vendee terminates the contract unless the vendor elects to waive the time provision and continue the agreement in force. Under such a contract notice is not required unless the vendor elects to continue it in force."

By the provisions of paragraph 3 of the contract submitted time is made of the essence of the contract and failure to make payments due provides for a forfeiture.

Under the provisions of the Fratt case quoted apparently no notice would be required. However, subsequent decisions of the Supreme Court of this State have somewhat weakened the effect of that decision.

There are so many particular facts which might be involved in the separate cases that we could not give you an opinion which could govern you in all cases. Those details must be worked out by your County Attorney or other counsel.

Without having fully studied all cases on the subject, it would appear to the writer of this letter that a notice should be given to each purchaser that his rights have terminated, or in case a further examination of the decisions appear to require it that his rights will terminate on a certain date. Unless the latter is required by some specific decision, I would think a notice that the county has terminated the contract would be sufficient. If you terminate the rights in that way and sold to the Federal Government, the burden would then be upon any party objecting thereto to bring suit in equity which you could defend.