

Opinion No. 265.**Taxation—Tax Deeds—Statutes—
Curative Legislation.**

HELD: 1. Curative acts cannot cure or in anywise affect any act done after the date of passage and approval.

2. The curative portion of Sec. 1, Chap. 33, Laws of 1933-34 operates only on conditions already existing and, in a sense, can have no prospective operation.

April 14, 1936.

Board of County Commissioners
Yellowstone County
Billings, Montana

In your letter to us of January 28, you inquire to what extent, if at all, sales made by you of city lots in the city of Billings, to which Yellowstone county acquired title by tax deeds, in accordance with the provisions of Chapter 65, Laws of 1933, rather than in accordance with the provisions of Chapter 33, Laws of Extraordinary Session 1933-1934, are affected by a certain paragraph of Section 1 of said Chapter 33. (See Opinions of Attorney General, Jan. 24, 1936.)

The paragraph in question is as follows: "All sales heretofore made, or attempted to be made, by counties of property purchased for taxes, and the deeds to purchasers from such counties, whether or not irregular or void, for any reason, or because of any irregularity or failure to follow the directions or comply with the provisions of any statute relating to such deeds, or relating to the taxation or sale of such property for taxes, or the time or manner of redeeming

property, or of securing a tax deed, are hereby confirmed, and said deeds and any deed or contract executed under this section shall vest in the purchaser, as of the date of said deed, or contract, all the right, title, interest, estate, lien, claim and demand of the State of Montana, and of the county, in and to said real estate, * * *."

This provision of the law is curative in character. It operates only on conditions already existing, and, in a sense, can have no prospective operation. A retrospective statute curing defects where they are, in their nature, irregularities only, and do not extend to matters of jurisdiction, is not void on constitutional grounds, but the healing statute must in all cases be confined to validating acts which the legislature might previously have authorized. If the thing wanting, or which failed to be done, is something the necessity for which the legislature might have dispensed with by prior statute, then it is not beyond the power of the legislature to dispense with it by a subsequent statute. And if the irregularity consists in doing some act, or in the mode or manner of doing some act, which the legislature might have made immaterial by prior law, it is equally competent to make the same immaterial by subsequent law. *Lamont v. Vinger*, 61 Mont. 530; *Snidow v. Montana Home for the Aged*, 88 Mont. 337; *Martin v. Glacier County*, decided by Supreme Court April 11, 1936.) A "curative act," in the ordinary sense of that term, is a retrospective law, acting on past cases and existing rights. (*Inhabitants of Otisfield v. Scribner*, 151 Atl. 670.) A curative act is one intended to give legal effect to some past act or transaction which is ineffective because of neglect to comply with some requirement of law. (*Anderson v. Lehmkuhl*, 229 N. W. 773.) A curative statute is one enacted to cure past irregularities which are not jurisdictional. (*Dunkum v. Maceck Bldg. Corp.*, 176 N. E. 392.)

Section 2235, Revised Codes 1921, was amended by Section 3 of Chapter 85, Laws of 1927; again by Section 1 of Chapter 162, Laws of 1929, and finally by Section 1 of Chapter 33,

Laws of Extraordinary Session 1933-1934. The paragraph above quoted first appeared in said Section 3, was repeated without change in the 1929 amendment, and is now found verbatim in the 1933-1934 amendment. The re-enactment of the curative part of the 1927 Act did not change its meaning or extend its operation in any degree. It did not cure or in anywise affect any act done after the date of its passage and approval, which was March 8, 1927. (*Snidow v. Montana Home for the Aged*, supra.)