

Opinion No. 31.

**Tax Deed. Application for Redemption
—Right of.**

HELD: Where taxes are delinquent more than four years, right to redeem must be asserted within three years.

February 2, 1937.

Mr. George J. Allen
County Attorney, Park County
Livingston, Montana

My dear Mr. Allen:

You have submitted to this office, a request for an opinion upon the following statement of facts.

Taxes became delinquent on certain real estate for the year 1932, and on July 17, 1933, the property was sold to Park County for delinquent taxes. On December 17, 1935, the county assigned a tax certificate, upon payment of delinquent taxes, for the years 1932, 1933, 1934 and 1935, and the first installment for 1936. Assignee has given the sixty days required notice for the purpose of obtaining tax deed, and is demanding the tax deed from the county treasurer.

Section 2201 R. C. M., 1931, made provision for the redemption of the property within thirty-six months from the date of purchase, or at any time prior to the application for a deed.

Section 2201 R. C. M., 1935, amended that section by adding an additional provision. The purpose of the amendment was to give additional time for redemption, with a maximum period of five years. However, this amendment did provide that no tax deed should issue in less than five years from the date of purchase, providing:

First: That not more than four years taxes were delinquent.

Second: Provided the applicant had not paid to the county treasurer taxes for the second and/or any subsequent year.

In the statement of facts submitted this office, it appears that more than four years taxes are delinquent, and second, that no second or subsequent year of delinquent taxes has been paid. This amendment acts in the character of a forfeiture and penalty, and, inasmuch as the owner has permitted more than four years taxes to be delinquent, this property is not now entitled to the advantages that would otherwise accrue to it from the amendment, and it follows, that at this time, such property is subject to tax deed, and it is the duty of the county treasurer to issue a tax deed to this applicant.