

Opinion No. 33.

**Taxation—Tax Deeds—Redemption,
Right of Counties.**

HELD: The former owner of tax deed lands, is not entitled to redeem by payment of amount for which struck off to County at tax sale, where he, or a third person, was an intervening owner.

The original owner of lands sold to the County for taxes, has no rights under Section 2235, R. C. M., 1935.

February 3, 1937.

H. R. Bjorklund
Clerk and Recorder and
Clerk of the Board of County Commissioners
Valley County
Glasgow, Montana.

My dear Mr. Bjorklund:

You have submitted to this office, an opinion rendered by your County Attorney, Mr. Thos. Dignan, regarding certain tax deed lands and asking that his opinion be passed upon by this office.

It appears that Valley County took a tax deed for certain lands, January 31, 1928 for the sum of \$911.00, delinquent taxes. September 17, 1928, Valley County entered into an agreement with Martin A. Lien to sell these lands for the sum of \$911.00, and at the time received a cash payment of \$182.00, the balance to be paid in four annual installments. Mr. Lien defaulted in his payments, having paid only the initial installment, but he did pay taxes upon this property for the year 1929.

April 3, 1935, the Board of County Commissioners cancelled the contract held by Mr. Lien. Taxes have been assessed against the lands for the years 1930 to 1934, inclusive. January 7, 1937, Mr. Lien as former owner of the property applied to the Board of County Commissioners to purchase these lands.

The question is, should Mr. Lien, as former owner of the lands, in addition to the payment of \$911.00, also be required to pay the taxes assessed against the lands between September 17, 1928 and April 31, 1935.

The Board of County Commissioners sold said land to Mr. Lien under

the authority of Section 2235, chapter 85 of the 20th Legislative Assembly. Among other provisions of this section, it is provided:

"On the first Monday in March following the execution of such contract, or deed, as the case may be, the property shall be subject to taxation in the name of the purchaser or his assignee, and the purchaser, or his assignee shall thereafter pay all taxes and assessments lawfully laid against such property.

"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 relative 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, including the right to recover unpaid taxes, interest and penalties if the tax sale or any of the tax proceeding or tax deed shall be attached and held irregular or void."

Under Mr. Lien's contract with the Board of County Commissioners, his land became subject to taxation, and the taxes became a lien upon that property from the date of the sale to Mr. Lien until the cancellation of his contract. Also, under his contract of purchase, all of the right, title and interest of the county in and to said real estate was vested in Mr. Lien. Mr. Lien acquired this land under said contract, not by virtue of his former ownership, but in the character of a stranger. No connection whatever existed between him and the county, which gave him any right to purchase this property, other than as a stranger. By virtue of his purchase of this land, under this contract, his former rights as an owner were entirely divested.

Section 2235, R. C. M., 1935, provides:

"That at any time before such sale, the tax-payer whose property has been deeded to the county may purchase such property by payment to the county of the full amount of the taxes for which such property was sold, and such purchase and payment may be effected by an installment contract."

Valley County acquired these lands by tax deed, January 31, 1928, and if said lands had remained in the ownership of the county until January 7, 1937, then the provisions of Section 2235 R. C. M., 1935, would have been applicable to Mr. Lien, and he could have redeemed this property from the county, and may have purchased the same by paying the sum of \$911.00, but it is only in those cases where the county still retains the tax deeded lands that the former owner may repurchase the same by a payment to the county of the full amount of taxes for which the property was sold, and the purchaser would not be compelled to pay any taxes intervening or between the date of the taking of the tax deed, and repurchase, because the county during this interval would be the owner of the land and no taxes could accumulate upon the same while the county was the owner.

By reason of the sale to Mr. Lien, under date of September 17, 1938, he succeeded to all the rights of the county and the statute specifically subjects the land under this contract to payment. By reason of his purchase of this land, Mr. Lien does not acquire any rights whatever under Section 2235, and is not entitled to redeem this property by reason of being the former owner. This property should be appraised and be sold as is other tax deed property.

The county attorney in his opinion, states by reason of the interest of the State of Montana in this matter, and by reason of the far reaching effect of this decision, this matter should be submitted to this office. I am rather of the opinion that this particular case is an unusual case and will not generally apply to the other cases in your county.

The general situation in your county, no doubt, will be that the county has taken tax deeds to these lands;

that no intervening third party has repurchased these lands under the 1927 statute referred to, but that the lands have been held by your county and in that event the original owner would have the right to repurchase this land, and would not be compelled to pay, and you would not have a right to add taxes between the date of the purchase of the property and the resale of the property, and the original owner would be compelled to pay only the amount of taxes for which the property was originally sold to your county on tax deed.