

for an opinion as to the validity of your procedure.

It appears that notice of tax sale of certain lands was given November 10, 1936, giving notice of the sale December 11, 1936, at 10:00 o'clock A. M., at public auction to the highest bidder, and at a price not less than 90% of the appraised value. On the date of the sale no bid was made for the southwest quarter of section 32, and its appraised value is \$1760.00. One bid was offered for the north half of the southwest quarter in the sum of \$880.00. The Board refused to accept this bid. No bid was offered for the south half of the southwest quarter, and therefore the same was struck off to the County. Thereafter, we received a subsequent letter from your County Clerk and Recorder stating an interested party, at a time later than the time and date advertised for the sale of the property, made a bid for the entire tract, in the sum of \$1760.00, and is willing to buy the entire quarter. Your advertisement states that the Board has the right to reject any and all bids.

Since the receiving of your communication, your county attorney has appeared at this office and has given us further information upon this question.

This office has suggested that if there be any conflict in the facts, that an agreed statement be sent here, so as to avoid any confusion. However, it appears now that the facts necessary for the determination of this matter as submitted to us in your two letters, and as advised by the county attorney, so far as are necessary for this opinion are substantially in accord.

Section 2208.1 provides in part:

"Whenever the county shall acquire any land by tax deed, it shall be the duty of the board of county commissioners, within six months after acquiring title, to make and enter an order for the sale of such lands at public auction at the front door of the court house, provided, however, that thirty days' notice of such sale shall be given by publication in a newspaper printed in the county, such notice to be published once a week for three successive weeks, and by posting notice of such sale in at least three public places

**Opinion No. 35.**

**Counties—Taxation—Tax Sales. Accepting Bids At.**

**HELD:** The county must sell lands for delinquent taxes, in units, as appraised, and may not divide such lands and sell on any other basis.

The County may not reject any bid, if the same is within the appraised value.

The sale must be made at time advertised, or new bids called for.

February 5, 1937.

Mr. O. G. Johnson  
Chairman, Board of County Commissioners  
Valley County, Glasgow, Montana

Dear Sir:

You have submitted the following set of facts to this office, asking

in the county. Notice posted and published shall be signed by the county clerk and one notice may include a list of all lands to be offered for sale at one time. It shall describe the lands to be sold, the appraised value of same, the time and place of sale, and no sale shall be made for a price less than the fair market value thereof, as determined and fixed by the board of county commissioners prior to making the order of sale, which value shall be stated in the notice of sale. And it shall be the duty of the board of county commissioners to so appraise, order and advertise for sale all lands heretofore conveyed to the county by tax deeds within ninety days from and after this act takes effect.

In the event any of said lands are not sold at such public sale, the county commissioners may at any time either again appraise, advertise and offer the same at public auction or sell the same at private sale at the best price obtainable, but at not less than ninety per cent of the last appraised value, and on such terms as may be agreed upon, provided the rate of interest on deferred payments shall not exceed four per cent per annum, and provided further that the terms other than price, as to each class of land, grazing, farming and irrigated, shall be uniform in each county.

If a sale is made on terms, the chairman of the board of county commissioners shall execute a deed to the purchaser, or his assignee conveying the title of the county in and to the lands so sold."

The law requires this property to be appraised at its fair market value, to be determined and fixed by the Board of County Commissioners. The Board appraised the southwest quarter of Section 32 as one unit, and it can only be sold as one unit by virtue of that appraisal. Supposing one half of this unit was sold for \$880.00, the entire unit being appraised for \$1760.00, it may be that the portion not sold would not have an equal value with the portion sold, and may have a conceivable value of only \$120.00, therefore your board would only receive \$1,000.00 for this land, altho it was appraised in the the sum or \$1760.00.

Therefore, the board acted quite properly in refusing to accept the bid for the one-half of this unit.

Your notice states that the board reserves the right to reject any and all bids. However, we do not think the board has the right to reject any and all bids if those bids received are within the appraised value of the property as determined and fixed by the Board of County Commissioners,

It is assumed that when the board appraised this property it fixed a fair market value for the property, and in the short space of time elapsing between the appraisal of the property and the sale of the property, no situation could reasonably arise substantially altering and increasing the value of the property. The Board of County Commissioners must make an order to advertise these lands within six months after acquiring same. In the event the lands are not sold at such public sale, the board may again appraise, advertise and offer the same at public sale. It is the purpose of the law to require lands to be sold immediately after acquiring the same and be replaced on tax rolls.

In *State ex rel Malott v. Cascade County*, 94 Mont. 394, at page 406, the court said: "It is also the duty of the county to apply for a tax deed and to sell the land as speedily as possible."

If the Board of County Commissioners has pursued the law in submitting this land for sale, then there should be no reason after a valid bid is made for the lands, to reject that bid.

However, Section 2208.1 does provide that this notice of sale, among other things, shall provide the time and place of sale. The Board, in its notice of sale, advised the public that the property would be sold on the 11th day of December, 1936, at 10:00 o'clock A. M. At that time the prospective purchaser appeared and made a bid of \$880.00, for one half of a unit, which bid was improper and rightly rejected by the Board. However, the Clerk and Recorder has advised us that nothing further occurred at such time, but since that time, and prior to the next regular session of the Board, an interested party did make an offer for this particular tract of land in the sum of \$1760.00. The statute requires this land to be sold at a particular time and that it be so advertised. The general public has a right to make com-

petitive bids, and if a bidder should appear at a later date than the time set, you would exclude competitive bidders and may cast a cloud upon the title you give. Therefore, it is my conclusion, that you must sell these lands in the units as appraised.

Second, that if the bidder appears at the time and place advertised for the sale of these tracts, and at that time and place bids within the appraised value for the property on the unit appraised, you have no right to reject his bid.

Third, if as it appears in this particular case, the bidder appeared after the time specified for the sale as advertised by your board, and did make a bid, within the appraised price for the entire unit, yet inasmuch as this bid was not made at the time specified for the sale of the property, you must reject that bid and readvertise the property and reappraise it, and sell the same on the basis of competitive bids.