

Opinion No. 40.

Tax Deed, Application for—Redemption Tax Sale, Right of.

HELD: Where taxes are delinquent for more than four years, purchaser of tax sale certificate may

apply for such tax deed as soon as more than four years taxes are delinquent. Counties and individuals have same rights regarding application for tax deed, except Section 2201, as amended by Chapter 125, Laws of 1933, by express terms does not restrict rights of individuals acquired prior to the amendment.

February 15, 1937.

Mr. Gordon O. Berg
County Attorney
Ekalaka, Montana

Dear Mr. Berg:

You have asked my opinion as to when tax deed may be taken on the following facts;

"In this county a tax sale was held, and a certificate issued to the county on July 24, 1933, as provided by law. On February 5, 1936, said certificate was assigned to the present holder as provided by law. Thereafter, an action was commenced against the county treasurer et al for a tax deed, in the District Court. When the matter was called to my attention, following my taking office, the time for answer or demurrer had elapsed. I however, informed the court that I did not think the county treasurer could legally issue a tax deed until after July 24, 1937, in the light of Section 2201, R. C. M., 1935. A decree has been signed, but no application will be made for a tax deed until this statute is interpreted relative to the instant case. The holder of the certificate has paid all taxes for 1932, '33, '34, '35, and the first half of 1936; in other words, all taxes which were delinquent.

"It is my opinion that no differences exist in regard to this point because a county and an individual, as a certificate holder, and if a county would not be entitled to a tax deed, neither would an individual."

In this connection you call attention to an opinion of the Attorney General, in Volume 15, Opinions of the Attorney General, p. 235, dated September 26, 1933.

According to Section 2201, R. C. M., 1935, tax deed may not be issued in

less than five years from date of purchase (of lands sold for delinquent taxes) "in all cases where not more than four years taxes shall be delinquent." From the facts stated, it appears that more than four years taxes are delinquent and were delinquent when application for tax deed was made; therefore, the restriction above quoted would not apply. As soon as the 1936 (the fifth year) became delinquent, this restriction became inapplicable, and the purchaser could immediately apply for tax deed. He was therefore within his statutory rights when he applied for tax deed on or after March 5, 1936. See also our opinion No. 30, dated February 2, 1937, to County Attorney Allen, Volume 17, Opinions of the Attorney General.

The opinion of the Attorney General, No. 344, in Volume 15, Opinions of the Attorney General, p. 233, should be modified.

We agree with you that no difference exists between a county and an individual. The effect of the last sentence in said Section 2201, as amended, was to make Chapter 125, Laws of 1933, inapplicable to parties other than counties holding tax sale certificates prior to the passage and approval of the Act, since their property rights had been acquired and were based on the law before it was amended.