

Opinion No. 133.

Counties—Tax Deed Lands—Repurchase of—Interest, Rates of.

HELD: 1. The taxpayer's right to repurchase tax deed land does constitute a preferential right.

2. The taxpayer's rights extend to his successor in interest.

3. The rate of interest on deferred installments, when purchase is made by taxpayer is six per cent; if sold to other than taxpayer, the rate is four per cent.

September 13th, 1939.

Mr. P. R. Heily
County Attorney
Columbus, Montana

Dear Mr. Heily:

You have submitted to this office the inquiry as to whether or not the right to purchase tax deed lands, by the original owner, as authorized by Section 2235, R. C. M., 1935, as amended by Chapter 181, Laws of 1939, by payment in the manner provided for in Section 4465.9, (a) constitutes a preferential right, (b) applies to the right of purchase of the taxpayer's successor in interest, and (c) if said property is sold on terms, what is the statutory rates of interest.

The county's title to the tax deed land is subject to the taxpayer's right to purchase the property at any time before the county otherwise disposes of the land.

Smith vs. Furlong, 117 Pac. 527 (Calif.);

Jordan vs. Beale, 155 Pac. 990 (Calif.).

Chapter 181, supra, affects all persons in the same position alike. Its application is uniform in each county. The classification is reasonable. The taxpayer purchasing the property is given no special rights not accorded others in a similar position or in the same classification.

State ex rel. Ford vs. Schofield, 53 Mont. 502;

Sparling vs. Hitsman, 99 Mont. 521.

The right of the taxpayer to purchase the tax deed property is a substantial vested right and subject to transfer like any other real property right. (Chap. 70, Vol. 3, R. C. M., 1935.) Such right inures to the original taxpayer's successor. The express terms of the statute do not confine the purchase to the original owner.

Chapter 181 provides that the taxpayer may purchase the property by paying the tax arrears in the manner provided for in Section 4465.9. Section 4465.9 fixes the rate of interest the taxpayer must pay on deferred payments at six per cent per annum. If the property is sold to a third person the rate of interest is four per cent per annum. (Par. 2, Chap. 181.) The greater interest disadvantage to the taxpayer is offset by the fact that he may purchase the property for the amount of tax arrears which may be less than a competitive bidder would pay.