

Opinion No. 145.

**Counties—Tax Deed Lands—
Crops, Ownership of.**

HELD: 1. Annual crops grown on lands acquired by the county through tax deed, if severed before purchase, are personal property belonging to the county.

2. The owner and taxpayer may repurchase his property from the county, at any time before the sale for the

amount for which the property was actually sold, by paying for the same in cash or on terms.

3. The owner must purchase the entire tract described in the tax deed.

October 4, 1939.

Mr. J. B. McKenna
County Attorney
Lewistown, Montana

My Dear Mr. McKenna:

You have submitted the following questions for my opinion:

Should the county or the former owner and taxpayer receive the harvested crops raised on lands purchased or "redeemed" under the provisions of Section 2235, R. C. M., 1935, as amended by Chapter 181, Laws of 1939? Where lands have been purchased or "redeemed" by the former owner and taxpayer under the provisions of Chapter 181, what are the powers of the board of county commissioners in relation to entering into an installment contract? What right or title has the former owner to crops grown upon the land and harvested prior to entering into a contract of purchase? Has the county the right to sell only a portion of the land to the former owner and taxpayer or must the entire tract be sold?

When the county received the tax deed its title was absolute (Section 2215.9, R. C. M., 1935, as amended by Chapter 63, Laws of 1937). The original owner and taxpayer had no right or interest in and to the land, except the right to repurchase as provided for under Chapter 181. Annual crops constitute personal property (*Morton v. Union Central Life Insurance Co.*, 80 Mont. 593). Particularly is this true when the crop is severed (Sec. 6761). Inasmuch as the annual crop, severed or otherwise, constitutes personal property and is grown upon land the title of which is in the county, it follows that the taxpayer and original owner who repurchases his property is without any right or interest in and to the annual crop severed or harvested prior to the execution of the contract to repurchase.

Chapter 181 provides that the taxpayer may repurchase his property by paying the amount for which the county purchased the same. Such payment may be effectuated by an in-

stallment contract with annual payments, as provided in Section 4465.9. Section 4465.9 provides that the sale shall be for cash or on such terms as the board of county commissioners may approve, provided that at least 20 per cent of the purchase price shall be paid in cash. The discretionary powers vested in the board of county commissioners by Sec. 4465.9 refer and apply to a person who purchases the property in a capacity other than that of an original owner and taxpayer. The right of the former owner to repurchase his property by paying the amount for which it was sold to the county and making the payments upon the installment plan is in effect tantamount to a redemption, (*Leonard v. Western, et al.*, 74 Mont. 513). Redemption statutes must be liberally construed with the end in view of permitting the original home owner to reclaim his property and replacing the land upon the taxrolls. (*State ex rel. Bell v. McCullough*, 85 Mont. 435). If a repurchase is made, whether or not the same shall be in cash or installment terms is a discretionary matter for the taxpayer and not the board of county commissioners. If the taxpayer elects to enter into an installment contract the terms shall be as provided for in Section 4465.9.

The right of the original owner and taxpayer to repurchase his property after sale to the county is a right additional and dissimilar to the right of purchase by a stranger. Chapter 181 provides that the taxpayer and former owner may repurchase such property by payment of the full amount of taxes for which the property was sold. By virtue of the express provisions of Chapter 181, a repurchase by the former owner and taxpayer of his lands must include the whole of said property sold to the county as evidenced by the tax deed and for the full amount for which it was sold.