

Opinion No. 170.

**Counties—County Commissioners—
Lands, Lease and Terms of.**

HELD: 1. County Commissioners may lease county owned land, which has been offered for sale and not sold, and for which there is no immediate sale.

2. Such lease may be for cash, or on the crop payment plan.

November 30, 1939.

Mr. Fred C. Gabriel
County Attorney
Malta, Montana

My dear Mr. Gabriel:

You have submitted to this office for my opinion the inquiry as to the proper amount of rent which must be paid in the leasing of county lands and whether or not the rent must be paid in cash or may be paid upon the crop payment plan.

As a condition precedent to the leasing of county owned lands acquired by tax deed, or otherwise, the land must first be offered for sale at public auction. In the event the land cannot be sold the board of county commissioners, if it is to the best interest of the county, may lease the same on the best terms available. In determining the best terms available, the county commissioners, in the exercise of their discretion, may lease the land for cash or on a crop payment plan, which latter plan gives the county a percentage of the crop grown. The mere fact that Chapter 152, Laws of 1937, provides that all revenue derived from the lease, except as otherwise provided, shall be paid into the county treasury, does not imply that the lease must necessarily be for a cash rental, because if the lease is on a crop rental the proceeds derived from the sale of the crop will be paid into the county treasury.

Chapter 152 authorizes the lease of county land acquired by tax deed, or otherwise, under such limitations and restrictions as are provided by law and in such manner and for such purposes as in the judgment of the board are to the advantage of the county. Chapter 152, by its express language, indicates that other laws may exist imposing detailed and cumulative directions for the leasing of county property.

Chapter 193, Laws of 1939, and Chapter 152, Laws of 1937, must be read together. These chapters in effect authorize the leasing of county owned land at the best terms available, either cash or crop rental, whichever in the sound discretion of the board of county commissioners as determined by the facts and surrounding circumstances in each particular instance is to the best advantage of the county. It is understood, of course, that only such lands for which immediate sale may not be had can be so leased.