

Opinion No. 222

Taxation—Delinquent Taxes—Application for Tax Deed—Assignment by County After Application for Tax Deed.

HELD: Although a county may assign its certificate for tax sale after making application for tax deed and before tax deed has issued, in the event it does make such assignment it should dismiss its application or action for tax deed.

There is no statutory authority for the county assigning rights acquired under its application for a tax deed so as to enable the assignee to take tax deed on the proceedings commenced by the county.

March 29, 1940.

Mr. Seth G. Manning
County Attorney
Wibaux, Montana

Dear Mr. Manning:

You have requested my opinion on the question "whether after the county has started action for tax deed, and has complied with the necessary steps, including filing of proof of service, an individual can then take an assignment of the taxes and, availing himself of the procedure taken by the county, obtain without further action on his part a tax deed to himself on the date specified in the action of the county.

It is my opinion that this question must be answered in the negative. While Section 2207, R. C. M., 1935, as amended by Chapter 24, Laws of 1939, provides for the assignment by the county of all the right of the county

in lands acquired at tax sale, we know of no statute which authorizes the county to go further than the assignment of the certificate of tax sale, by assigning its rights acquired under the application for a tax deed. In the absence of such statutory authority we do not think the county has such power. If the county should assign the certificate of tax sale after application for tax deed has been made, it should withdraw its application for tax deed or dismiss the action.

When an individual makes application for a tax deed he must pay all taxes, penalty and interest accumulated at the time of such application, while a county is not required to do this. See Sec. 2231, R. C. M., 1935, as amended by Chapter 54, Laws of 1937; also our opinion dated March 27, 1940, to County Attorney Kronmiller, a copy of which is enclosed. Moreover, if the county should assign any rights acquired under its application for tax deed, such procedure might be prejudicial to the rights of the owner who has the right to rely upon the notice given to him by the county and the right to repurchase after tax deed has issued to the county, while the property is advertised for sale. We do not think the county should be a party to such procedure which might adversely affect the owner.