

## Opinion No. 230.

**Counties—County Commissioners—  
Sale of Lands—Re-Appraisal and  
Re-Advertising Not Necessary Before  
Private Sale—Chapter 193,  
Laws of 1939.**

HELD: In the event lands are not sold when first appraised and noticed for public sale, the commissioners may at any time sell the same at private sale without re-appraisal or re-advertising and at not less than 90% of the appraised value. Of course, if there should be a substantial increase or change in land values the commissioners should order a re-appraisal.

Where the fair market value cannot be determined by the board or there has been a substantial increase or change in land values the commissioners should order a re-appraisal.

May 1, 1940.

Mr. Robert E. Purcell  
County Attorney  
Jordan, Montana

Dear Mr. Purcell:

You have submitted the following:

"1. Some time ago the commissioners leased to a sheep company several tracts of land. The terms of these leases have not yet expired, but the company now wants to purchase the land and has made application therefor to the commissioners. The commissioners are willing to cancel the leases and sell the land. Must the commissioners re-appraise and re-advertise the land for sale before the sale can be made?"

"2. Mr. A leased a tract of land from the commissioners. The term of this lease has expired, and Mr. A has now made application to purchase the land. Must the commissioners re-appraise and re-advertise the land for sale before the sale can be made?"

"3. The county owns considerable tax deed land which it has appraised and advertised for sale, but has been unable to sell either at public auction or private sale, or to lease same. Some of the land has been owned by the county for a considerable period of time and some for a short period. Only one appraisal of its value has been made and only one advertise-

ment of sale. If an application is made now to purchase this land must the commissioners re-appraise and re-advertise the land for sale, or may the board sell same at any time at private sale under the provisions of par. 2, Chapter 193, Session Laws of 1939, without such re-appraisal and re-advertisement, using the only appraisal made by the commissioners as the 'last appraised value?'"

I do not find any statutory provision compelling the county commissioners to re-appraise and re-advertise land for sale before a private sale can be made. Section 2208.1, as amended by Section 1, Chapter 193, Laws of 1939, reads:

"\* \* \* and no sale shall be made for a price less than the fair market value thereof, as determined and fixed by the board of county commissioners prior to making the order of sale, which value shall be stated in the notice of sale.

"In the event any of said lands are not sold at such public sale, the county commissioners may at any time either again appraise, advertise and offer the same at public auction or sell the same at private sale at the best price obtainable, but at not less than ninety per cent of the last appraised value, and on such terms as may be agreed upon, \* \* \*."

If the lands are sold at private sale they need not be re-appraised or re-advertised, but may not be sold at less than 90% of the last appraised value. We think it was the intent of the legislature, however, that no sale should be made for less than the fair market value as determined and fixed by the board and in the event the fair market value cannot be determined, an appraisal would seem to be necessary.