

March 15, 1939.

Hon. Joe Metlen
Representative From Beaverhead
County
Dillon, Montana

Dear Mr. Metlen:

You have requested my opinion on the question whether lands acquired by the county by tax deed and sold on five-year contracts should be taxed to the purchasers as other lands, or only to the extent of the interest of the purchaser as is the case when state lands are sold.

The authority for taxing state lands only to the extent of the interest of the purchaser is found in Section 1805.92, R. C. M., 1935, which reads in part as follows:

"The interest of the purchaser in state lands shall be subject to taxation to the full extent of such interest. * * *"

Section 4465.9, R. C. M., 1935, provides for the power of the county commissioners to sell lands belonging to the county, however acquired, which are not necessary to the conduct of the county business. No power, however, is given in this section to tax the property sold only for the interest of the purchaser.

Section 2235, R. C. M., 1935, which provides for the sale of unredeemed property sold for delinquent taxes and the terms of sale, etc., provides:

"On the first Monday in March following the execution of such contract, or deed, as the case may be, the property shall be subject to taxation in the name of the purchaser or his assignee, and the purchaser, or his assignee, shall thereafter pay all taxes and assessments lawfully laid against such property."

Section 2208.1, R. C. M., 1935, which makes it the duty of the county commissioners within six months after acquiring tax deed title, to order sale of lands so acquired and to advertise the sale thereof, etc., also provides:

"On the first Monday in March following the execution of such contract, the lands shall be subject to taxation in the name of the purchaser, or his assignee, and in the

Opinion No. 31.

Taxation—Lands Sold on Contract by County, How Taxed.

HELD: Lands sold by the county under contract for five years must be taxed as other lands and not to the extent of the interest of the purchaser.

event the taxes are not paid, and the same become delinquent, said contract shall stand cancelled and all payments theretofore made shall be taken, treated and regarded as rent for said property."

It will be noted that neither of these sections contains any provision that the lands sold on contract shall be taxed to the extent of the purchaser's interest, nor do we find any other section in our Codes so providing. On the other hand, it seems to have been the purpose of the Legislature in providing for and requiring the sale of such lands and the liberal terms of such sale, to get the lands back on the tax rolls as quickly as possible. (See Volume 15, Opinions of the Attorney General, 137.) At any rate there would be no power to cause such lands to be taxed only to the extent of the purchaser's interest unless such power has been expressly given by statute. The county commissioners have only such powers as are expressly granted by statute or necessarily implied therefrom.

We are therefore compelled to advise that in our opinion lands sold by the county must be taxed as other lands and cannot be taxed to the extent of the interest of the contract purchaser.