

Opinion No. 89.**Taxation—Tax Sales—Bids.**

HELD: Tax deed lands must be sold in units and to the highest bidder.

The county may accept a cash bid in preference to a term bid, although the latter is the highest bid when property is offered for sale for cash.

June 21, 1939.

Mr. H. B. Landoe
County Attorney
Bozeman, Montana

My dear Mr. Landoe:

You have submitted the following matter to this office for my opinion:

Gallatin County gave notice of the sale of certain tax deed lands pursuant to the provisions of Section 2208.1 as amended by Chapter 193, Laws of 1939. The notice of sale stated that such lands would be sold at public auction, for cash or upon terms, provided, if the lands were sold on terms that at least 20% of the purchase price should be paid in cash at the time of the sale, and deferred payments, in effect, to be made in accordance to law. One bidder is willing to purchase the several units or the entire tract or greater portion thereof. Individual bidders, or bidder, offered a higher bid, on terms, for particular tracts or tract. If individual units are sold to different persons the bidder for the entire tract or greater portion thereof will not purchase the remaining units, as he desires a large acreage contiguous or otherwise. In the event the units are sold to different purchasers, many other units will for the present time remain unsold, and of course the county will not receive cash otherwise paid. A solution of the problem requires an answer to the following two questions: Must the land be sold in units to the highest bidder? May the county accept a cash bid in preference to a term bid although the latter is the high bid?

(1) The general plan of selling delinquent tax real estate, from inception to completion, requires that it be sold in units or lots and blocks. A unit of land within contemplation of law, refers to the land as it was constituted at the time the county acquired the tax deed. (Sections 2208.1, 2235.) The county is restricted to a separate sale of each unit. The unit must be sold for the best price obtainable. Two or more units can be merged into a single unit. (Section 2189.)

(2) The board of county commissioners has the discretion to sell each unit for cash or upon terms (Section 2235; *Snidow v. Montana Home for the Aged*, 88 Mont. 337). If the property was offered for sale for cash, a

term bid, although in excess of a cash bid may be rejected, provided that the board of county commissioners deemed the lesser cash offer, under all the existing circumstances, more beneficial to the county. In this particular instance the board elected to accept either a cash or term bid, and is bound thereby. The person bidding the highest purchase price, although on terms, is entitled to the right to purchase the unit bid for.

No assumption of loss to the county can be indulged in because the sale was not for cash, or because the sale of particular units may result in the postponement of the sale of other units contiguous or otherwise. The county is fully secured under the provisions contained in the term contract, and the price paid, in a term contract being greater than the cash price, it follows that the county receives correspondingly greater benefits. The loss of the immediate sale of other land or units does not imply a loss to the county, because those lands will ultimately be similarly disposed of to the highest bidder. A sale of the units to one purchaser, where some of the units are sold at a price less than that offered by the highest bidder would constitute discriminatory treatment to the successful bidder of a particular unit.