

No. 122

COUNTY COMMISSIONERS—TAX DEEDS—CON-
TRACTS OF SALE—TAXATION

Held: County is not obliged to deliver actual possession to purchaser of tax deed land on contract.

May 23, 1941.

Mr. John D. French
County Attorney
Lake County
Polson, Montana

Dear Mr. French:

You have presented the following factual situation:

"There are numerous parcels of land in this County which have been taken by the County on tax deeds and later sold on contract on the forms prescribed by the state board of equalization which provide 'that the purchaser may take immediate possession.' In many instances persons are squatting on or leasing (from the former owner) such tax deeded lands without knowledge of the County Commissioners; and in such cases the purchasers, relying on the above mentioned clause seek to force the county to remove said squatters or lessees from the property at county expense."

You inquire as to the county's liability to deliver actual possession to the purchaser.

Section 2235 of the Revised Codes of Montana, 1935, as amended declares that "any deed or contract shall vest in the purchaser, as of the date of said deed or contract all the right, title, interest, estate, lien, claim and demand of the State of Montana, and of the County, in and to said real estate . . ."

A tax deed, of course, creates a new title in the nature of a dependent grant and the interest of the lessee of the former owner is extinguished.

State v. Jeffries, 83 Mont. 111, 270 Pac. 638;

State v. Board of County Commissioners, 89 Mont. 37, 296 Pac. 1;

Richardson v. Lloyd, 90 Mont. 127, 300 Pac. 254;

Northwest Improvement Co. v. Lowry, 104 Mont. 289, 66 Pac. (2nd) 792.

The purchaser under contract can acquire no greater possessory right than that acquired under tax deed. The permissive right of possession given by the county under the contract can amount to no more than the nature of the possession, whether actual or constructive, held by the county.

The grantee named in a valid tax deed is entitled to take possession of the property described in the deed if he can do so peaceably and quietly. (Steltz v. Morgan, Idaho, 101 Pac. 1057.) But the purchaser is obliged to resort to ejectment if the original owner does not peaceably yield possession. (26 R. C. L. 405.)

I agree with you in your conclusion there is no liability on the part of the county to put the purchaser under contract into actual possession of the land.

Sincerely yours,

JOHN W. BONNER
Attorney General