

No. 13

COUNTY COMMISSIONERS—TAX DEED LAND—PREFERENTIAL RIGHT OF TAXPAYER—TERMINATION OF PREFERENTIAL RIGHT

Held: Preferential right of taxpayer, whose property has been deeded to county may be terminated without any further notice to such taxpayer. The act of Board of County Commissioners in selling the property terminates the said preferential right.

January 31, 1941.

Honorable Richard S. Nutt
State Senator, Richland County
The Capitol
Helena, Montana

Dear Senator Nutt:

You have submitted the following inquiry:

“I note from the press that you have recently held that the right to purchase by a taxpayer his lands taken by tax deed prior to the time the County sells the same is, under Chapter 181, Laws of 1939, a preferential right.

"Will you kindly advise me whether or not the County can sell such lands so as to terminate this preferential right of purchase without giving to the land owner personal notice of the sale of such lands by the County?"

In answering your inquiry, it is necessary to examine the statutes and decisions relative to the taking of tax deeds by the county.

Upon examination of Chapter 199 of Volume One of the Revised Codes of Montana, 1935, we find the method adopted by the Legislature for the collection of property taxes: Tax Sales—Sale of Tax Deed Lands—Redemption—Procuring Tax Deeds.

Several sections of this Chapter have been amended and the pertinent amendments to your query will be hereafter mentioned.

By Section 2191, Revised Codes of Montana, 1935, covering the manner of conducting the tax sale, when there is no purchase in good faith for the same as provided in this Code, on the first day the property is offered for sale, the whole amount of the property assessed must be struck off to the County as the purchaser. This is after Notice of Tax Sale has been given as provided in Section 2186, Revised Codes of Montana, 1935, as amended by Chapter 26 of the Laws of 1939. We now have the property sold to the County, and under Section 2201, Revised Codes of Montana, 1935, the owner, or any party having an interest in or lien upon such property may redeem from such sale as herein provided.

Sections 2209 and 2209.1, Revised Codes of Montana, 1935, provide for the notices of application for tax deed and the taking of the deed, with notice as therein provided.

The title conveyed by this tax deed is defined in Section 2215, Revised Codes of Montana, 1935, "providing that a tax deed conveys absolute title free from all encumbrances, except the lien for taxes which may have attached subsequent to the sale."

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

By Section 2235, Revised Codes of Montana, 1935, as amended by Chapter 181 of the Laws of 1939, it is provided that at any time before the sale of tax deed lands by the County, the taxpayer whose property has been deeded to the County, may purchase such property by payment to the County of the full amount of the taxes, penalties and interest for which such property was sold and such purchase and payment may be effected by an installment contract with annual payments, as provided in Section 4465.9, and at six per cent per annum.

It will be noted that when the land is first sold for taxes, notice is published. The period of redemption then runs, after which notice of application for tax deed is given. Then the taking of the deed extinguishes all of the title, right and interest of the taxpayer in the land, except the legislature gave him an additional time to buy the land; that is, up to the time the County Commissioners sell the land, he has a privilege, a permission, a preferential right, to buy the land.

"Chapter 33, as enacted by the extraordinary session (1933, 1934) and approved by the Governor, does not actually extend the time of redemption from tax liens, but does, under certain conditions, afford an equivalent relief by enabling the former owner to buy back his property for the amount of taxes, penalties and interest, if it shall not theretofore have been disposed of by the County."

Blackford v. Judith Basin County, 109 Mont. 578, 98 Pac. (2nd) 872.

It is therefore my opinion that the right of the taxpayer, whose property has been deeded to the County, to purchase the same at any time before the County sells it is such a right as needs no personal notice to the taxpayer to extinguish the same, and the act of the Board of County

Commissioners in selling the property is all that is necessary to terminate such preferential right.

Sincerely yours,

JOHN W. BONNER
Attorney General