

## No. 23

**TAXATION—TAX DEED—TAXPAYER OR FORMER  
OWNER—REPURCHASE—PENALTY—INTEREST**

**Held:** Former owner-taxpayer may repurchase by paying original taxes with penalty and interest to date tax deed was issued to county.

February 15, 1941.

Mr. Norman R. Barncord  
County Attorney  
Wheatland County  
Harlowton, Montana

Dear Mr. Barncord:

You have submitted the following: Where a county makes application for tax deed on two separate pieces of land, both formerly belonging to the same person, on December 20, 1938, and tax deed is executed to the county on March 28, 1939, one parcel carrying the amount of \$188.56 and the other \$388.69, being delinquent taxes respectively on each parcel for the years 1931, 1932, 1933, 1934, 1935, 1936, 1937 and the first half of 1938, together with interest and penalty up to date of tax deed, may the former owner, on November 18, 1940, repurchase this land from the county by paying only the original tax and without paying penalty and interest to the date the tax deed was issued to the county?

In answering the foregoing it is only necessary to inquire as to the status of the county and the former owner or taxpayer on November 18, 1940. On November 18, 1940, the county owned this land by tax deed; the former owner had been divested of all title in the land.

"The taxes had been cancelled by the issuance of the tax deed, and his title had been completely divested; . . ."

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

The only right the former owner had in regard to this land was the preferential right to purchase this land from the county before it is sold to another party, as provided by Chapter 181 of the Laws of 1939, which provides as follows:

"Provided, further, that at any time before such sale, 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." (Emphasis mine.)

You will also note the provisions of Chapter 70, Laws of 1937, which provides in part as follows:

" . . . Such redemption of real estate must be made on or before the first day of December, 1938, and if such redemption is not made by the first day of December, 1938, then redemption can only be made by payment of the original tax with accrued interest, penalties and costs as now provided by law. . . ."

And noting the provisions of Chapter 11 of the Laws of 1939, the pertinent part of which provides,

" . . . Provided, that nothing herein contained shall be construed so as to limit, restrict or prevent boards of county commissioners from ordering that applications be made for the issuance of tax deeds, or the issuance of tax deeds to counties, or the assignment of certificates of tax sale by county or city treasurers during the period between the time this act takes effect and February first, 1941, it being intended that during such period, boards of county commissioners may order applications to be made for tax deeds and that tax deeds may be issued to counties, and that county treasurers may assign certificates of sale in the same way, in the same manner and to the same extent as though this act had not been passed . . ."

"Chapter 33 as enacted by the extraordinary session 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.

Therefore, it is my opinion that, under the facts as you have given me, the former taxpayer or owner could repurchase said lands only by paying the original tax together with the penalty and interest to the date the tax deed was issued to the county.

Very truly yours,

JOHN W. BONNER  
Attorney General