

No. 238

**COUNTY COMMISSIONERS—TAX DEED LANDS—
CROPS—REPURCHASE—ORIGINAL TAXPAYER—
SUCCESSOR IN INTEREST**

Held: Where county took tax deed and owner held over and continued in possession and cropped lands, county is not entitled to share of crop. Former taxpayer, owner, or his successor in interest may at any time before the date fixed for public auction sale repurchase by paying county full amount of the taxes, penalties and interest due on the lands at the time of taking such deed. Such purchase and payment may be effected by an installment contract, such sale subject to reservations as provided in Section 2 of Chapter 171, Laws of 1941.

September 11, 1941.

Board of County Commissioners
Fallon County
Baker, Montana

Gentlemen:

You have submitted the following questions:

“On March 15, 1941, the County took Tax Deed to a farm. The original owner put in one hundred acres of wheat. He had no lease. We notified him—with several others in a like situation—that the County was to receive one-fourth of the crop. On August 4th this owner came in to redeem the land, and stated he though he was entitled to all of the crop. His wheat is ready to harvest but he has not harvested yet. We would like your opinion if the County can claim its one-fourth or if the owner is entitled to the entire crop.

“We have another case where the County took Tax Deed March 15, 1941. In this case the land was leased by the owner to another party. After the County took a tax deed this renter put in the crop, and was notified that the County was to receive one-fourth of the crop . . . He got a Quit Claim Deed from the owner, then came to the Commissioners and wanted to redeem as the original owner, and he also asked to take all the crop.”

In answering your questions, we will consolidate them, as the answer to one will settle both. The county may not claim or recover any of the crop in either case. The law on this question is well settled in this state, and has been almost universally applied.

In *Kester v. Amon, et al*, 81 Mont. 1, 261 Pac. 288, our Supreme Court held that, when an occupant of lands plants, cultivates and harvests crops during the term of his occupation, they are his personal property whether he occupied the land as a purchaser, a tenant, or a mere trespasser holding the land adversely to the real owner, and whether he came into possession of the land lawfully or not, provided he remain in possession until after the crops are harvested.

Prior to the foregoing decision our Supreme Court held in *Power Mercantile Co. v. Moore Mercantile Co.*, 55 Mont. 401, 409, 177 Pac. 406,

that the crops which a tenant by sufferance (or a trespasser) plants, cultivates and harvests during his wrongful occupancy are his as against the landlord or owner entitled to possession.

Now as to the rights of a former owner or the successor of a former owner to repurchase tax deed lands, we turn to Chapter 171 of the Laws of 1941, the pertinent part of which is as follows:

"Section 1. Whenever the county has acquired any land by tax deed it shall be the duty of the board of county commissioners within six (6) months after acquiring title to make and enter an order for sale of such lands at public auction at the front door of the courthouse, provided, however, that thirty (30) days' notice of such sale shall be given by publication in a newspaper printed in the county. Such notice shall be published once a week for three (3) consecutive weeks and shall be posted in at least three (3) public places in the county. Notice posted and published shall be signed by the county clerk and one notice may include a list of all lands to be offered for sale at one time. It shall describe the lands to be sold, the appraised value of same and the time and place of sale, and no sale shall be made for a price less than the fair market value thereof, as determined and fixed by the board of county commissioners prior to making the order of sale, which value shall be stated in the notice of sale. **Provided, further, that at any time before the date fixed for such sale, notice of which has been given as above provided, the taxpayer or successor in interest whose property has been deeded to the county may purchase such property subject to the reservation hereinafter provided by payment to the county of full amount of the taxes, penalties and interest due on said land at the time of taking said tax deed and such purchase and payments may be effected by an installment contract with annual payments as hereinafter provided.**" (Emphasis mine.)

It will be noted the emphasized portion of the foregoing act grants to the taxpayer (former owner), or his successor in interest, in lands taken by the county by tax deed, the right to repurchase the lands at any time before the date fixed to sell at public auction, subject to the reservations provided in the act (such as the reservation set out in Section 2 that the county may reserve not to exceed six and one-fourth per cent royalty interest in the oil, gas, and minerals produced and saved from said land), by paying to the county the full amount of the taxes, penalties, and interest due on the lands at the time of taking the tax deed. Such purchase and payment may be effected by an installment contract with annual payments as provided in Section 2 of said act as follows:

"Section 2. Such sale shall be made for cash or, in the case of real property, on such terms as the board of county commissioners may approve; provided, however, that if such sale is made on terms at least twenty per cent (20%) of the purchase price shall be paid in cash at the date of sale and the remainder may be paid in installments extending over a period not to exceed five (5) years and all such deferred payments shall bear interest at the rate of four per cent (4%) per annum.

"If a sale is made on terms, the chairman of the board of county commissioners shall execute a contract containing such terms as shall be provided by a uniform contract prescribed by the board of equalization and upon payment of the purchase price in full together with all interest which may become due on any installment or deferred payments, the chairman of the board of county commissioners shall execute a deed attested to by the county clerk to the purchaser, or his assigns, or such other instruments as shall be sufficient to convey all of the title of the county in and to the property so sold, provided that the county may reserve not to exceed six and one-fourth per cent (6¼%) royalty interest in the oil, gas, and minerals produced and saved from said land."

It is therefore my opinion the county may not retain any share of the crop in the cases you have submitted and the original taxpayer or owner or his successor in interest whose real property has been deeded to the county may, at any time before the date fixed for the public sale of said lands, repurchase such real property—subject to mineral reservations and any other reservations contained in Chapter 171 of the Laws of 1941—by payment to the county of the full amount of the taxes, penalties, and interest due on said lands at the time of taking said tax deed, and such purchase and payment may be effected by an installment contract with annual payments, as provided in Section 2 of Chapter 171, Laws of 1941.

Sincerely yours,

JOHN W. BONNER
Attorney General