

## No. 265

**LEASE OF COUNTY TAX DEED LAND—COUNTY COMMISSIONERS' AUTHORITY—TAX DEED LANDS**

**Held:** Chapter 171, Laws of 1941, provides with particularity the time and the method of leasing tax title county lands. Such authorized method excludes any other procedure and is exclusive. Boards of County Commissioners have no authority to lease tax title county lands other than as prescribed by the legislature in said Chapter 171, Laws of 1941.

October 10, 1941.

State Board of Equalization  
Capitol Building  
Helena, Montana

Attention: Mr. John A. Matthews

Gentlemen:

You have submitted the following question:

In the absence of any prohibition in either the statutes or constitution and under the statutes as they exist, has the board of county commissioners authority to lease land held by the county under tax deed and while such land is being so held pending allocation for tax sale?

In answer to your question, it may be well to quote the title of Chapter 171, Laws of 1941, which is as follows:

"An Act Relating to the Sale and Lease of Unredeemed Tax Title Property by County Commissioners; Permitting Counties to Reserve Oil, Gas, and Mineral Rights and to Sell or Lease the Same; Providing the Method of Sale or Lease, the Giving of Notice of Such Sale, and the Terms Thereof; Providing for the Taxation Thereof After Sale; Authorizing the Exchange of Property; Validating Leases Heretofore Made; and Repealing Chapter 181, Laws of 1939, Chapter 193, Laws of 1939 and All Other Acts and Parts of Acts in Conflict Herewith, and Repealing Section 4481.2 and Section 4481.3 of the Revised Codes of Montana of 1935."

This is an act relating to the sale and lease of unredeemed tax title property by county commissioners; and it is to be noted this act is the only statutory law setting forth and authorizing the Board of County Commissioners to sell or lease county owned tax deed lands, and providing the time and method of sale or lease thereof.

Section 1 of Chapter 171, Laws of 1941, provides in part as follows:

"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 . . ."

Therein it is set forth as the duty of the board of county commissioners—within six months after acquiring title to such lands—to make and enter an order of sale of such lands at public auction, and 30 days' notice of such sale must be given by posting and publication. It will be observed six months is the maximum time allowed the commissioners to make the order of sale, but in many counties they do have the land appraised and advertised and the sale held within sixty days after acquiring title thereto.

It will, of course, be remembered the taxpayer or successor in interest whose property has been so deeded to the county has a preferential right to purchase said lands as follows:

“ . . . 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 reservations hereinafter provided by payment to the county of the full amount of the taxes, penalties, and interest due on said land at the time of taking said tax deed and such purchase and payment may be effected by an installment contract with annual payments as hereinafter provided.”

Section 5 of Chapter 171, Laws of 1941, sets forth the time and the method of leasing such lands as follows:

“Whenever such lands have been offered for sale at public auction and not sold, the county commissioners may, if deemed for the best interests of the county, lease said lands upon the best terms obtainable for farming, grazing, or for oil and gas development purposes, provided that such lease, when for farming land, shall not extend over a period longer than three (3) years, and when for grazing lands such lease shall not extend over a period longer than five (5) years, except lands within a legally created or thereafter to be created grazing district when such lease may run for a period of not to exceed ten (10) years, provided, lands leased for all purposes may be subject to sale at the discretion of the board of county commissioners during the term of the lease and leases shall be subject to all rules and regulations relative to land use policies or regulations to best advance public welfare and benefit, that may be adopted by the board of county commissioners with the advice of the county agricultural planning committee and provided, further, that the lease rental may vary according to the livestock grazing capacity of the lands leased as determined by the board of county commissioners, and when for mineral or oil and gas purposes, said lease shall be for such terms as the board of county commissioners shall deem to be for the best interests of the county, and reserve a royalty of twelve and one-half per cent (12½%) which shall include any royalty payable to any person other than the county. The county commissioners may also, after any of said lands have been offered for sale and not sold when it is deemed for the best interest of the county, exchange said lands for other lands of equal value where the effect of such exchange would be to acquire land which could be leased or sold to better advantage.”

Since the legislature has provided a method and manner and has directed when such lands may be leased by the board of county commissioners, the board of county commissioners has no other authority and may lease such lands only as authorized by the law.

A county is merely a subdivision of the state for governmental purposes and as such is subject to legislative regulation and control . . . and legislative authority to regulate or control the disposition of county property not having been limited by the constitution, it could declare . . . that such property may be sold only under the restrictions and in the maner therein indicated.

Franzke v. Fergus County, 76 Mont. 150, 245 Pac. 962.

As to boards of county commissioners, “the power to act without authority does not exist.” (State ex rel. Bean v. Lyons et al., 37 Mont. 354, 364, 96 Pac. 922.)

"The fact that the contemplated action may be in the best interests of the county is not an admissable argument. The doctrine of expediency does not enter into constructions of statutes."

Franzke v. Fergus County, 76 Mont. 150, 245 Pac. 962.

The well-known legal axiom, "Expressio unius est exclusio alterius," applies in this instance, for where a statute directs a thing to be done in a particular manner, it implies it shall not be done otherwise.

Raleigh Gaston Ry. Co. v. Reid, 20 Wall 269, 20 U. S. 570,  
25 R. C. L. 981.

"It is a rule of recognized construction that the expression of one thing (or method) necessarily involves the exclusion of other things not expressed."

Gilbert v. Stockton Port Dist. (Cal.), 60 Pac. (2nd) 847, 848.

It is therefore my opinion the legislature, in enacting Chapter 171, Laws of 1941, has set forth and designated therein with particularity when and the method whereby the board of county commissioners may sell and/or lease tax title county lands—and such method is exclusive. It is further my opinion the board of county commissioners has no authority to sell or lease such tax title county lands in any other manner than prescribed in said Chapter 171, Laws of 1941.

Sincerely yours,

JOHN W. BONNER  
Attorney General