

No. 277

**TAXATION—PREFERENTIAL RIGHT OF TAXPAYER—
COUNTY COMMISSIONERS—DUTY OF
COUNTY COMMISSIONERS**

Held: Where board of county commissioners fails to make and enter an order of sale of land, the title to which has been acquired by county by tax deed within six months—the taxpayer or successor in interest may, at any time before the date fixed for such sale, exercise his preferential right to purchase such land. The criterion set by the legislature restricting the preferential right is at any time before the date fixed for such sale.

October 22, 1941.

Mr. Bert W. Kronmiller
County Attorney
Big Horn County
Hardin, Montana

Dear Mr. Kronmiller:

You have submitted the following question:

“Where county has acquired land by tax deed, but board of county commissioners have failed or neglected for over six months after acquiring such title, to make and enter an order for a public auction sale of such lands and give notice thereof all as provided in Section 1, Chapter 171, Laws of 1941, may the taxpayer or successor in interest whose property has been so deeded to the county, still come in at any time before the date fixed for such sale and purchase said lands from the county as provided in said section and chapter?”

The legislature imposed in mandatory language upon the board of county commissioners the duty to make and enter an order for a public auction sale of any land acquired by tax deed, within six months after acquiring title thereto, giving thirty days' notice by posting and publication, all as provided in Section 1 of Chapter 171, Laws of 1941.

However, the legislature went further and granted a preferential right to the taxpayer (former owner) or successor in interest, in the last paragraph of said Section 1 of Chapter 171, Laws of 1941, 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. 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 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.”

It will be noted that, under this provision, the taxpayer or successor in interest is given a preferential right to purchase said land from the county “. . . at any time before the date fixed for the sale . . .” Obviously it was the intent of the legislature, by imposing the duty on the board of county commissioners to make and enter an order of sale within six months after the county acquired title to the land, that such land would be placed on the market within that time, but the failure or neglect of the board to perform its duty would not, nor could such failure, defeat the intention of the legislature to grant to the taxpayer or successor in interest the preferred right to purchase the land **at any time before the date fixed for such sale.** (*Blackford v. Judith Basin Co.*, 109 Mont. 578, 98 Pac. (2nd) 872.)

It should be noted the legislature specifically defined the time in which the taxpayer or successor in interest may exercise his preferential right to purchase such land as at any time before the date fixed for such sale. Obviously then, such preferential right does not expire until such date.

It is therefore my opinion a taxpayer or successor in interest whose property has been deeded to the county has a preferential right to purchase such property, subject to the reservations in said chapter, at any time before the date fixed for such sale, all in accordance with the provisions of Chapter 171, Laws of 1941.

Sincerely yours,

JOHN W. BONNER
Attorney General