

## No. 297

**TAXATION—LAND SOLD BY COUNTY—ASSESSMENT**

**Held:** Land purchased from a county on contract is taxable to the extent of the full and true value thereof on the first Monday in March following the execution of the contract.

November 18, 1941.

Board of County Commissioners  
Daniels County  
Scobey, Montana

Gentlemen:

You have asked this office for an opinion as to the method of taxing land under the following statement of facts:

Before the creation of Daniels County a parcel of land lying in the present territory of Daniels County was acquired by Sheridan County through settlement and adjustment of county funds deposited in a bank that had become defunct. The land was sold to a Daniels County resident in 1933 on contract, which contract was recorded in 1938, and the assessor assessed the land at its full and true value up to the present time and since and including the year 1934.

The only reason for not assessing the above land at its full and true value would be that it, or some interest in it, is county property and therefore exempt under Section 2 of Article XII of the State Constitution and Section 1998 of the Revised Codes of Montana of 1935, since all property not exempt is subject to taxation. (Section 1997, Revised Codes of Montana, 1935.)

Property must be assessed "to the persons by whom it was owned or claimed, or in whose possession or control it was at twelve o'clock M. of the first Monday of March next preceding . . ." (Section 2002, Revised Codes of Montana, 1935.) This Section, though amended several times, is in this regard the same as it was in 1933.

If the property was taxable it would have to be assessed "at its full cash value." (Section 2001, Revised Codes of Montana, 1935.) The property represented by the contract was "real estate" within the definition of the term in Section 1996 of the Revised Codes of Montana, 1935. There was no exemption in whole or in part, notwithstanding the fact the county retained legal title to secure the payment of the deferred portion of the purchase price. The purchaser is the beneficial owner. A similar case, involving state lands purchased on contract, resulted in the court's holding the land purchased should be taxed in the name of the purchaser. (See *Courtney v. Missoula County*, 21 Mont. 591, 55 Pac. 359.) Subsequently it was provided by statute the purchaser should be taxed only to the full extent of his interest. (Section 1805.92, Revised Codes of Montana, 1935.)

It might be noted in passing that, when tax deed land is sold on contract by counties, the property becomes subject to taxation the first Monday in March following the execution of the contract. (Section 2235, Revised Codes of Montana, 1935.) It is a general policy to get lands back on the tax rolls.

It is my opinion land purchased from the county on contract is taxable to the extent of the full and true value of the land on the first Monday in March following the execution of the contract of purchase and your assessor followed the proper procedure.

Sincerely yours,

JOHN W. BONNER  
Attorney General