

No. 4

**COUNTY COMMISSIONERS—LEASING OF COUNTY
LANDS—OIL AND GAS LEASES**

**Held: County Commissioners may lease County lands subject to sale,
but may not lease such lands for oil and gas purposes.**

January 16, 1941.

Mr. Denzil R. Young
County Attorney
Fallon County
Baker, Montana

Dear Mr. Young:

Your inquiry of January 7, 1941, has been received, in which you ask my opinion as to whether the Board of County Commissioners may execute oil and gas leases upon County tax deed lands.

You have covered the statutes applicable to this question very well in your opinion. In reviewing the legislation that has been enacted, it will be noted that since the enactment of Sections 4465.27, 2208.1 and 2235; Revised Codes of Montana, 1935, there has been a continual granting of more jurisdiction and power to Boards of County Commissioners in regard to leasing and disposing of county-owned lands.

Section 4465.27, Revised Codes of Montana, 1935, was amended by Chapter 152 of the Laws of 1937, as follows:

"All such property must be leased subject to sale by the board, and no lease shall be for a period to exceed three (3) years, save and except as to deposits of coal only or coal and the surface above the same, owned by any county or to which any county has heretofore or may hereafter acquire title by tax title, tax deed or otherwise,

which lease or leases may be for a period of ten years and to run and continue as long thereafter as coal is being mined and extracted from leased property in commercial quantities and that as to all such deposits of coal only or coal and surface the provisions of Sections 2208.1 and 2235 of the Revised Codes of the State of Montana, A. D. 1935, and all other provisions of the laws of Montana relating to the sale by the county commissioners of a county of property owned by the county or acquired by tax title or otherwise shall be suspended during the time any such lease or leases of coal only or coal and surface made hereunder shall be in force and effect."

Then it will be noted that Section 2235, Revised Codes of Montana, 1935, was amended by Chapter 181 of the Laws of 1939, which amendment contains the following provision:

"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 payment, as provided in Section 4465.9."

And further, Section 2208.1, Revised Codes of Montana, 1935, was amended by Chapter 193 of the Laws of 1939; and the pertinent part of said amendment to your inquiry is as follows:

"Whenever any such lands have been offered for sale at public auction and not sold, the county commissioners may, if deemed for the best interest of the county, lease said lands upon the best terms obtainable, provided that such lease, when for farming lands, shall not extend over a period of three years; for grazing lands, it shall not extend over a period longer than **five years**, except of lands to be within a legally created or thereafter to be created grazing district, when such lease may run for a period of not to **exceed ten years**, provided lands leased for grazing 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 benefit and welfare, that may be adopted by the board of county commissioners, with the advice of the county agricultural planning committee, and further provided that the lease rentals may vary according to the carrying capacity of the lands leased as determined by the board of county commissioners."

It is apparent from the foregoing that the Board of County Commissioners may execute the different leases enumerated therein and the lease for deposits of coal only, or coal and the surface above the same as provided by Chapter 152, Laws of 1937, that all such leases be let subject to sale, and that "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."

As will be noted, Chapter 181, Laws of 1939, and Chapter 193, Laws of 1939, were approved on the same date, and therefore became laws at the same time. Chapter 181 deals with the sale of county lands particularly, while Chapter 193 deals especially with leasing.

While these two chapters are somewhat in conflict, we must apply the rule set forth in Section 10520, Revised Codes of Montana, 1935: ". . . In the construction of a statute . . . and when a general and particular provision are inconsistent, the latter is paramount to the former. So a particular intent will control a general one that is inconsistent with it."

State v. Certain Intoxicating Liquors, 71 Mont. 79, 227 Pac. 472;

City of Butte v. Cohen, 9 Mont. 435.

Under Chapter 181, supra, it appears to have been the intention of the legislature to grant to the taxpayer, whose property has been deeded to the county, a right to purchase the property from the county **at any time before** the property is sold by the county; and this provision, in my opinion, takes precedence over the provision in Chapter 193, supra, whereby ". . . lands leased for grazing purposes may be subject to sale, **at the discretion** of the Board of County Commissioners, during the term of the lease . . ."

Such leases should be made subject to sale.

All of the laws relative to leasing such lands by the Board of County Commissioners deal with the leasing of farm lands, coal deposits, and the surface above the same, for grazing and grazing districts.

From the foregoing, it is my opinion that Boards of County Commissioners may not lease county tax deed lands for oil and gas purposes.

Very truly yours,

JOHN W. BONNER
Attorney General