

No. 473

TAXATION—NATIONAL FORESTS—COUNTIES

- Held:** 1. Sale of tax title land to Federal Government, for inclusion in National Forest, must follow usual and customary method as sale to individual.
2. County cannot warrant title on sale of tax title land.
3. County can quiet title to tax title land.

August 29, 1942.

Mr. William F. Shallenberger
County Attorney
Sanders County
Thompson Falls, Montana

Dear Mr. Shallenberger:

You have submitted a copy of an offer of a contract made by the Board of County Commissioners of Sanders County to the United States Government for the sale of certain tax deed lands for inclusion within the Cabinet National Forest, in which offer the county agrees to accept in exchange for said land timber receipts of the value of the agreed sale price. The receipts will be retired at some future time from the sale of timber on the land in question and other land belonging to the government.

You ask the opinion of this office:

1. Whether the Board of County Commissioners can enter into such a contract.
2. Whether, if such a sale is made, the Board of County Commissioners can transfer said land to the government by warranty deed.
3. Whether the county is authorized by statute to quiet title to the land in question.

The United States proposes to purchase the land under the authority of Section 6 of the Act of Congress approved May 1, 1911, (now appearing as Section 516, Title 16, United States Codes Annotated) and Section 6

of the Act of Congress, approved June 7, 1924, (now appearing as Section 570, Title 16, United States Codes Annotated), which said first Act provided no deed or other instrument of conveyance shall be accepted until the legislature of the state in which the land lies shall have consented to the acquisition of such land by the United States. The county's offer is in conformity with the provisions of Section 516, Title 16, above.

The legislature of the State of Montana by the enactment of Section 1, Chapter 118, Laws of 1935, (now appearing as Section 25.2, Revised Codes of Montana, 1935) has given the consent of the State of Montana for the purchase of land for the purposes contemplated by the two Acts of Congress above mentioned.

It is to be noted, however, the enactment by the Legislative Assembly of the State of Montana goes no further than a consent to the United States Government for the purchase of land for the purposes contemplated, a consent necessary on account of the conflict of jurisdiction always existing between the Federal and State Government.

The Board of County Commissioners is an executive body of limited powers and must in every instance justify its action by reference to the provisions of law defining and limiting its powers. (*Judith Basin County v. Livingston*, 89 Mont. 438, 298 Pac. 356; *Carbon County v. Draper*, 84 Mont. 413, 276 Pac. 667; *Lewis v. Petroleum County*, 92 Mont. 563, 17 Pac. (2nd) 60). With this rule prevailing, reference must be had to the statutes of the state dealing with the sale of tax title land. The last enactment and the procedure now controlling appear as Chapter 171 of the Session Laws of 1941.

This chapter makes no exception in the case of a sale to the United States Government. In a number of instances—with reference to the sale of state land—special legislation has been enacted, permitting a departure from the usual and customary method of sale; but no such exception has been made as a tax title land. This chapter further provides that the deed or other instrument to be issued on payment of the purchase price shall be sufficient to convey all title of the county and there is no authority therein for warranty of title.

It is therefore the opinion of this office:

1. The usual and customary procedure for the sale of tax title land must be followed, and that the Board of County Commissioners is not authorized to follow the procedure contemplated in the submitted offer of contract. (See also Report and Official Opinions of the Attorney General, Vol. 16, No. 103.)
2. Any warranty contained in deed executed to the government in fulfillment of said offer or contract would not be binding on the county.
3. If a tax deed has actually issued to the county for the land in question, the county can quiet title under authority of Section 2208.4, Revised Codes of Montana, 1935.

Sincerely yours,

R. V. BOTTOMLY
Attorney General