

No. 5

COUNTIES—TAX DEED LANDS, repurchase of—
INTEREST, rate of

- Held:**
1. Taxpayer's right to repurchase tax deed land constitutes a preferential right which extends to his successor in interest.
 2. The rate of interest on deferred installments, when purchase is made by taxpayer, is six percent; if sold to other than taxpayer, the rate is four percent.
 3. Title to property sold under Section 4465.9 does not pass to purchaser or his assigns until final purchase price is paid.

January 17, 1941.

Mr. J. E. McKenna
County Attorney
Fergus County
Lewistown, Montana

Dear Mr. McKenna:

You have submitted the question as to whether or not, under the provisions of Chapter 181, Session Laws of 1939, a grantee from the original owner has a right to repurchase tax deed lands from the County after the County has taken tax deed to the land if the purchaser of the statutory right from the original owner acquired his right by deed from the said original owner subsequent to the time the County took its tax deed. Paragraph 5 of Chapter 181, Laws of 1939, among other things, provides:

"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 payments, as provided in Section 4465.9."

The latter, Section 4465.9, Revised Codes of Montana, 1935, fixes the rate of interest the taxpayer must pay on deferred payments at six percent per annum. If the property is sold to a third person, the rate of interest is four percent per annum. (Paragraph 2, Chapter 181.) The greater interest disadvantage to the taxpayer is offset by the fact he may purchase

the property for the amount of tax arrears, which may be less than a competitive bidder would pay.

Said Section 4465.9 further provides:

"No title to any property sold under the provision hereof, shall pass from the County until the purchaser or his assigns, shall have paid the full amount of the purchase price therefor, into the County Treasurer for the use and benefit of the County."

The right of the taxpayer to purchase the tax deed property is a substantial vested right and subject to transfer like any other real property right. (Chapter 70, Volume 3, Revised Codes of Montana, 1935.) Such right inures to the original taxpayer's successor. The express terms of the statute do not confine the purchase to the original owner.

It is therefore my opinion that the original owner's grantee has the right, any time before sale by the County, to repurchase tax deed land from it after the County has taken tax deed therefor, even though the successor acquired his right by deed from the original owner subsequent to the time the County took the same for tax deed.

Sincerely yours,

JOHN W. BONNER
Attorney General