

## No. 58

**TAX DEED LANDS—COUNTY COMMISSIONERS—  
SALES—LEASES—APPRAISAL AND ADVERTISING**

**Held:** County Commissioners, under Chapter 171, Laws of 1941, may—after appraisal—order tax deed lands sold at public auction. Notice of sale must be published and posted. Where lands do not sell at such public auction, Board may then sell at private sale at not less than 90% of the last appraised value. Then in the event land cannot be sold, Board may again both appraise and readvertise and sell at public auction and if not sold, may sell at private sale at not less than 90% of this last appraised value or may lease for farming, grazing, or for oil and gas, or may exchange the same, as determined by the Board to be for the best interests of the county.

March 24, 1941

Mr. Robert E. Purcell  
County Attorney  
Garfield County  
Jordan, Montana

Dear Mr. Purcell:

You have submitted the following questions for my opinion:

- "1. Where the County Commissioners are unable to sell, either at public auction or at private sale, or to lease, or to exchange, tax deed lands in the original tract as described in the tax deed conveying title to the county, has the Board the authority to divide the original tract into smaller tracts and sell, lease, or exchange said smaller tracts?
- "2. If the Board has this authority, should the Commissioners first re-appraise and then advertise the smaller tract for sale at public auction before selling it at private sale, or can the Commissioners sell the smaller tract of land at private sale after first re-appraising the smaller tract, without advertising it for sale at public auction?"

In answering your first question, it is necessary to refer to Chapter 171, Laws of 1941. This chapter repeals Chapters 181 and 193 of the Laws of 1939, and all Acts and parts of Acts in conflict therewith, and also repeals Sections 4481.2 and 4481.3, Revised Codes of Montana, 1935. The pertinent parts of said Chapter 171, Laws of 1941, relative to your inquiry are as follows:

"Section 1. 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 contracts with annual payments as hereinafter provided.

"Section 2. Such sale shall be made for cash or, in the case of real property, on such terms as the Board of County Commissioners may approve; provided, however, that if such sale is made on terms at least twenty per cent (20%) of the purchase price shall be paid in cash at the date of sale and the remainder may be paid in installments extending over a period not to exceed five (5) years and all such deferred payments shall bear interest at the rate of four per cent (4%) per annum . . .

"Section 4. In the event any of said lands are not sold at such public sale the County Commissioners may at any time either again appraise, advertise, and offer the same at public auction or sell the same at private sale at the best price obtainable at not less than ninety (90%) of the last appraised value and on such terms as may be agreed upon, provided the rate of interest on deferred payments shall be four per cent (4%) per annum and provided, further, that the terms other than price as to each class of land, grazing, farming, and irrigated, shall be uniform in each county.

"Section 5. Whenever 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 for farming, grazing, or for oil and gas development purposes, provided that such lease, when for farming land, shall not extend over a period longer than three (3) years, and when for grazing lands such lease shall not extend over a period longer than five (5) years, except lands within a legally created or thereafter to be created grazing district when such lease may run for a period of not to exceed ten (10) years, provided, lands leased for all 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 welfare and benefit, that may be adopted by the Board of County Commissioners with the advice of the County Agriculture Planning Committee and provided, further, that the lease rental may vary according to the livestock grazing capacity of the lands leased as determined by the Board of County Commissioners, and when for mineral or oil and gas purposes, said lease shall be for such terms as the Board of County Commissioners shall deem to be for the best interest of the county, and reserve a royalty of twelve and one-half per cent (12½%) which shall include any royalty payable to any person other than the county. The County Commissioners may also, after any of said lands have been offered for sale and not sold when it is deemed for the best interest of the county, exchange said lands for other lands of equal value where the effect of such exchange would be to acquire land which could be leased or sold to better advantage."

It will be noted Section 1, *supra*, provides, among other things, that within six months after acquiring title to the lands the Board of County Commissioners shall make and enter an order for sale of such lands at public auction, giving thirty days' notice by publication and posting. One notice may include a list of all lands to be offered for sale at one time, giving the description and appraised value of each tract, time and place of sale. The aforesaid section provides further that no sale shall be made for a price less than the fair market value, as determined and fixed by the Board of County Commissioners by their appraisal made prior to making said order, which value shall be stated in the notice of sale.

Section 2 provides that such sale shall be made for cash or on terms as the Board may approve, but that at least 20% of the purchase price shall be paid in cash at the date of sale, and the remainder paid in installments over a period not to exceed five years at 4% interest per annum.

By Section 4 it is provided that, if any of said lands are not sold at such public auction sale, the Board of County Commissioners may, at any time, again appraise and advertise and offer the same at public auction; or they may sell the lands at private sale at the best price obtainable, but at not less than 90% of the last appraised and advertised value.

Under Section 5, whenever the lands have been offered for sale at public auction and are not sold, the Board of County Commissioners has been granted the authority, if it determines it is for the best interests of the county, to lease said lands as therein provided; or in the event it deems it for the best interests of the county, the Board may exchange said lands for other lands of equal value where, by doing so, the acquired lands could be leased or sold to the county's best interests.

It will be noted the Legislature has lodged a great deal of authority in the hands of the Board of County Commissioners to be used in sound discretion and for the best interests of the county in dealing with tax deed lands.

After tax deeds have been executed to the county, the Board of County Commissioners may appraise any tract so acquired or may divide it in any way it may, in its sound discretion, determine will result in a better sale or lease for the county.

However, each separate tract must first be both appraised and advertised as provided in Section 1 above. This is a mandatory provision and is to give all persons an equal opportunity to purchase and to keep any fraud from entering into the transaction.

In the event said tracts or parts of tracts of land, as appraised and advertised, are not sold at public auction, and in the event the Board cannot sell at private sale for at least 90% of the said last appraisal, then the Board may again divide or add tracts or parts of tracts as it determines is for the best interests of the county. Thereafter the Board of County Commissioners must both appraise and advertise the land or lands and sell the same at a public auction sale; or the said Board may then sell the land or lands at private sale at not less than 90% of the said last appraisal, or the said Board may lease or exchange the land or lands as provided for in Section 5, supra.

Sincerely yours,

JOHN W. BONNER  
Attorney General