

## No. 64

**TAX DEED LANDS—TAXPAYER OR SUCCESSOR IN  
INTEREST—PURCHASE FROM COUNTY—  
TIME LIMIT**

**Held:** Preferential right, privilege or permission to taxpayer to purchase from county under Chapter 181, Laws of 1939, being repealed in toto by Chapter 171, Laws of 1941, such preferential right under Chapter 181 expired by the repeal. Such right is not a vested right. Taxpayer or successor in interest may now repurchase at any time before date fixed for sale **ONLY**.

March 28, 1941.

Mr. Gordon O. Berg  
County Attorney  
Carter County  
Ekalaka, Montana

Dear Mr. Berg:

You have submitted the following:

"Carter County took tax deed to land during 1940, and where such land was not sold at public auction, may the taxpayer whose property was deeded to the county and not sold now repurchase the lands formerly owned by him, as provided under the provisions of Chapter 181, Laws of 1939?"

The pertinent provisions of Chapter 181 of the Laws of 1939 provided as follows:

"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 payments, as provided in Section 4465.9."

The above provision was written into the law for the first time by the Twenty-third Extraordinary Session, 1933-1934, as Chapter 33, in response to the proclamation of the Governor proclaiming a nation-wide economic depression which had created a serious emergency. Under these circumstances, the Legislature enacted the provision which granted the privilege, permission or right to the taxpayer to purchase the land that had been deeded to the county.

This permission, privilege or preferential right so granted by the Legislature was not a vested right but, at most,, simply a preferential right; and when the Legislature deemed such emergency had passed, it could withdraw such permission, privilege, or preferential right, as the Legislature is supreme in such matters where, as here, there is no infringement of the Constitution.

By Chapter 171, Laws of 1941, the Legislature repealed Chapter 181, Laws of 1939, and all other Acts and parts of Acts in conflict therewith and also other laws, and by so doing the Legislature apparently expressed itself that such emergency no longer existed.

It is to be remembered "the taxes had been canceled by the issuance of the tax deed, and his title had been completely divested." (Blackford v. Judith Basin County, 109 Mont. 578, 98 Pac. (2nd) 872; Chapter 63, Laws of 1937.)

The only thing left to the taxpayer was a right to buy the land at any time before the county had disposed of it. The Legislature granted this privilege, and the Legislature has in part taken the privilege away by repeal, as it will be noted the last sentence in Section 1 of Chapter 171,

Laws of 1941, now provides 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 may purchase such property subject to the reservations.

The foregoing provision has shortened the period of time within which the taxpayer may purchase the land to the time before the date fixed for such sale. As the Board of County Commissioners is required within six months after acquiring title by tax deed to enter an order for sale thereof and appraise, publish and notice such sale for thirty days as therein required, it will be seen the taxpayer's time is shortened to any time within the six-month period the Board of County Commissioners may complete its duties in regard to such sale and fix the date thereof.

It is therefore my opinion the preference or right granted by Chapter 181, Laws of 1939, was revoked by the repeal in toto by said Chapter 171, Laws of 1941. Since Chapter 171, Laws of 1941, became effective and in full force and effect on March 19, 1941, it follows the taxpayer may not now purchase from the county under the terms of the repealed law. A taxpayer or successor in interest may purchase from the county only in the event he is eligible under the provisions of Chapter 171, Laws of 1941. The preference exists only to any time before date fixed or determined for such sale and notices, as in said Chapter provided.

Sincerely yours,

JOHN W. BONNER  
Attorney General