

No. 86

**COUNTY COMMISSIONERS—SALES—TAX DEED
LANDS—ASSIGNMENT OF ORIGINAL OWNER**

Held: Where application was made to county by assignee of former owner on March 15, 1941, to purchase lands taken by county on tax deed and applicant had performed all requirements of Chapter 181, Laws of 1939, and nothing was left to do but ministerial duty of Board to execute contract of sale, said purchaser was in time and entitled to contract.

April 21, 1941.

Mr. Bert W. Kronmiller
County Attorney
Big Horn County
Hardin, Montana

Dear Mr. Kronmiller:

You have submitted the following:

“The county acquired ‘A’s’ land by tax deed, in 1939. ‘B’ then acquired ‘A’s’ interest in said lands. ‘B’ made application to the county to purchase said land on March 15th, 1941, under the provisions of Chapter 181 of the Laws of 1939, paying down 20% in cash, and

balance in annual payments as provided by Section 4465.9, Revised Codes of Montana, 1935. The application was accepted. The contract was not actually signed until the 20th of March, 1941. Did 'B' lawfully acquire said lands by repurchase?"

In answering your inquiry it will be noted Chapter 181 of the Laws of 1939 was repealed in toto by Chapter 171 of the Laws of 1941, which became effective March 19, 1941.

Chapter 181 of the Laws of 1939 granted the preferential right or privilege to purchase the property from the county at any time before the county sold the same to someone else.

Obviously "B," under the facts submitted, had performed all that was required of him under the Act, by making the application, which was accepted and by paying down in cash the necessary 20% of the purchase price. All that was left to do was the ministerial act of the Board of County Commissioners in accepting and executing the contract, as that duty on the Board's part was mandatory.

"It is next argued that the provision in question does not require the Board to sell the land to the former owner, but is only permissive in form, since the word 'may' is used. The provision is permissive, but the permission is not to the Board to sell, but to the former owner to buy. Obviously, the statutory permission to buy necessarily imposes upon the Board a mandatory obligation to sell."

Blackford v. Judith Basin County, 109 Mont. 578, 587, 98 Pac. (2nd) 872.

It is my opinion the party "B," under the facts as you have presented them, had complied with the requirements of Chapter 181, Laws of 1939, and in time, and was entitled to a contract of purchase from the Board of County Commissioners for the said land, and under said contract legally acquired the same.

Sincerely yours,

JOHN W. BONNER
Attorney General