

No. 9

**COUNTY COMMISSIONERS—COUNTY TAX DEED
LANDS—SALES WITH OIL AND GAS RESERVATIONS**

Held: Boards of County Commissioners may not sell tax deed lands and reserve oil and gas in said lands. Section 2235, the Revised Codes of Montana, 1935, as amended by Chapter 181 of the Laws of 1939, directs that such deeds convey all right, title, interest, estate, lien, claim and demand of the State of Montana, and of the county, in and to said real estate.

January 24, 1941.

Mr. Oscar C. Hauge
County Attorney
Hill County
Havre, Montana

Dear Mr. Hauge:

You have submitted the following inquiry:

"May the Board of County Commissioners, upon selling tax deed lands, legally reserve unto the county a percentage of the oil and gas royalties or must the conveyance be for the entire property, including all oil and gas?"

It will be noted that the answer to the above query is found in Chapter 181 of the Laws of 1939. This Chapter amends Section 2235, Revised Codes of Montana, 1935, which in turn has been amended many times from its original form as Section 2682, Revised Codes of 1907.

Section 4465.9, Revised Codes of Montana, 1935, which is referred to by the amendment, is the general provision authorizing boards of county commissioners to sell county property, **however acquired**, which is not necessary in the conduct of the county's business or the preservation of its property. While Section 2235, Revised Codes of Montana, 1935, as amended by Chapter 181 of the Laws of 1939, relates solely to sales of tax-acquired property, and designates specifically what the deed executed by the county shall convey, the pertinent part is as follows:

" . . . and said deeds and any deed or contract executed under this Section shall vest in the purchaser, as of the date of said deed, or contract, **all the right, title, interest, estate, lien, claim and demand of the State of Montana, and of the county, in and to said real estate, including the right to recover unpaid taxes, interest and penalties if the tax sale or any of the tax proceedings or tax deed shall be attacked and held irregular or void . . .**"

The deed from the county conveys to and vests in the purchaser all of the **right, title, interest, estate, lien, claim, and demand of the State of Montana, and of the county, in and to said real estate**; and as oil and gas in place are part of the real estate, they must be conveyed by the county's deed and no such reservation is allowable under said law.

"A county is merely a subdivision of the state for governmental purposes, and as such is subject to legislative regulation and control; the legislature may within the limitations prescribed by the Constitution, circumscribe or extend the powers to be exercised by a county, and legislative authority to regulate or control the disposition of county property not having been limited by the Constitution, it could probably declare, as it did by Section 4444 and this Section, that such property may be sold only under the restrictions and in the manner therein indicated."

Franske v. Fergus County et al., 76 Mont. 150; 245 Pac. 962.

"Where the Legislature has prescribed with particularity the essential steps necessary to be taken by a county in the exercise of a power granted, the statute must be held to exclude any other mode of procedure, under the doctrine *expressio unius est exclusio alterius*."

Franske v. Fergus County, et al., 76 Mont. 150; 245 Pac. 962.

As all of the interests of the State and County must be conveyed by the deed executed by the County to the purchaser, it is my opinion no reservation may be made by the Board of County Commissioners of any oil or gas in said tax deed lands.

Very truly yours,

JOHN W. BONNER
Attorney General