

No. 90

**TAXPAYER—PURCHASE OF LANDS DEEDED
TO COUNTY**

Held: All preferential rights under Chapter 181, Laws of 1939, were extinguished by repeal. Where lands were offered for sale and not sold, and county now offers same land at second sale, the second sale is not "such sale" as defined by Chapter 171, Laws of 1941.

April 21, 1941.

Mr. H. O. Vralsted
County Attorney
Judith Basin County
Stanford, Montana

Dear Mr. Vralsted:

You have submitted the following:

"Judith Basin County acquired tax deed lands in 1939, which were appraised, advertised and offered for sale at public auction, all as provided by Chapter 181, Laws of 1939; the same were not sold. The county now expects to again appraise, advertise and offer the same for sale. May the taxpayer or successor in interest of such lands now purchase said property under provisions of Section 1 of Chapter 171, Laws of 1941, at any time before the date fixed for the said second sale?"

In answering your inquiry, it will be noted Chapter 181, Laws of 1939, was repealed by Chapter 171, Laws of 1941, and any and all preferential rights granted under Chapter 181, Laws of 1939, were divested, extinguished and became inoperative and at an end on March 19, 1941, the effective date of Chapter 171, Laws of 1941.

Report and Official Opinions of the Attorney General, Volume
19, No. 64.

It is necessary to put out of our minds entirely the repealed chapter. The only preferential right now granted a taxpayer or successor in interest is the right granted by Section 1, Chapter 171, Laws of 1941, which is 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 or 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 contract with annual payments as hereinafter provided."

It will be observed it is provided that, whenever the county has acquired any land by tax deed, it shall be the duty of the Board of County Commissioners to make an order of sale of such lands within six months after acquiring title, the sale to be at public auction with thirty days' notice by publishing and posting, the land to be appraised and the fair market value determined and fixed by the Board prior to making the order of sale.

" . . . that at any time before the date fixed for such sale . . . the taxpayer or successor in interest whose property has been deeded to the county may purchase such property . . . "

Section 1, Chapter 171, Laws of 1941, supra.

It is obvious the section refers only to "such sale," which is the first public auction sale of the land after the county acquires the tax deed. The order for "such sale" must be made by the Board within six months after the county acquires the title by tax deed.

When any lands heretofore taken by tax deed by the county have been once offered for sale and not sold, and when such land is again offered for sale by the county, it is not "such sale" as is defined in said section.

Sincerely yours,

JOHN W. BONNER
Attorney General