

**Opinion No. 169.****Tax Deed Lands in Irrigation District  
—Sale—Lease.**

Held: Boards of county commissioners, under the terms of Chapter 171, Laws of 1941, are required within six months after acquiring any land by tax deed to enter an order of sale.

January 25, 1944.

Mr. E. P. Conwell  
County Attorney  
Carbon County  
Red Lodge, Montana

Dear Mr. Conwell:

You have asked for an opinion on the following questions:

"1. Is it the duty of the board of county commissioners under Chapter 171, Laws of 1941, to offer the lands upon which tax deed was taken in 1932 and which was under the Red Lodge-Rosebud Irrigation District for sale?

"2. Is it the duty of the board of county commissioners to offer all or part of said lands acquired by tax deed in 1932 for sale upon the request or demand of an oil company or of a taxpayer of Carbon County?

"3. In the event that such land is offered for sale and no purchasers bid at such sale and leases are then entered into by the county with an oil company or other lessees under the provisions of said Chapter 171, Laws of 1941, what distribution should be made of the rental moneys?"

Answering your first question, wherein the county procured tax deeds to this land in 1932, and no appraisal has been had of said lands by the board of county commissioners and no sale has been authorized or held, it appears that it is now the duty of the board of county commissioners to proceed immediately to determine by appraisal and fix the fair market value of said

lands and then enter an order of public auction sale of said lands and proceed at once to advertise the said public auction sale by publication and posting, all as provided by Chapter 171, Laws of 1941.

Chapter 171, Laws of 1941, is now the exclusive authority and method of selling county tax deed lands. Section 1 of Chapter 171, Laws of 1941, provides in part as follows:

"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 reservation 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."

Answering your second question, it is apparent that no one need request or demand the board of county commissioners to sell these lands; the law is mandatory in its terms and it is pre-

sumed the board will perform its required duty.

Answering your third question, in the event the lands are appraised, the sale advertised and no preference is exercised by the taxpayer or his successor in interest, and the public auction sale is held and the lands are not sold, then in the sound discretion of the board of county commissioners, they may at any time either again appraise, advertise and offer such land for sale, or they may sell at private sale at the best price obtainable, but at not less than ninety percent of the last appraised value.

In the event no sale is made then, the board of county commissioners may, if deemed for the best interests of the county, lease such lands for farming not to exceed three years, for grazing, not to exceed five years, except when such lands are within legally created grazing districts when such lease shall not exceed ten years.

The board of county commissioners may lease such lands for mineral purposes, and when so leased for minerals or oil and gas purposes, said lease shall be for such terms as the board shall determine for the best interest of the county, and reserving a royalty of twelve and one-half percent (12½%), all as provided in Section 5 of Chapter 171, Laws of 1941, as amended by Chapter 82, Laws of 1943.

Sincerely yours,  
R. V. BOTTOMLY  
Attorney General