

sions of Chapter 171, Laws of 1941, and Chapter 147, Laws of 1943.

Your inquiries are based on the assumed statement of facts, as follows: The county acquired title to certain lands by tax deed, appraised, advertised and offered the same for sale under the provisions of Section 1 of Chapter 171, Laws of 1941, and having no purchaser at said sale, leased the same under the provisions of Section 5 of said Chapter 171; the lease provided for sale of said lands on thirty days' notice; during the lease the county received an offer from a third person to purchase said lands at the appraised value; the county commissioners re-advertised the land for sale at the original appraised value and notified the lessee of the sale in accordance with the terms of the lease.

Your inquiries in this matter all hinge upon the question of procedure taken by the commissioners.

Chapter 147, Laws of 1943, provides that when land is taken by tax deed and then leased as provided in Chapter 171, Laws of 1941, and thereafter the board of county commissioners shall receive an offer for the purchase of said lands under the provisions of Section 4 of said Chapter 171, the commissioners shall give the lessee a thirty day notice and within that time the lessee may purchase the land for the appraised value. It provides, however, that nothing in the act shall prohibit the county commissioners from reappraising, re-advertising and selling the land at public auction.

The only time the provisions of said Chapter 147, pertaining to the giving of notice to the lessee become pertinent is when the commissioners are making a sale upon an offer received under the provisions of Section 4, Chapter 171, Laws of 1941. That is in the case of a private sale to a person for not less than ninety percent of the present appraised value. In the event a person comes in and offers ninety percent or more of the appraised value of the premises, the commissioners may determine if it is for the best interests of the county to sell the premises and whether it is for the best interests of the county to sell at private sale or to reappraise, readvertise and again offer the premises at public auction. The county commissioners have three alternatives; they may determine it is for the best interests of the county to retain

**Opinion No. 213.**

**Counties—Lessee and Lessor—Lands—  
Title—Tax Deed Lands—County  
Commissioners.**

**Held:** Lessee of lands leased under the provisions of Section 5, Chapter 171, Laws of 1941, has no preferential right to purchase the leased lands at the original appraised value, if the commissioners sell the land at public sale after a reappraisalment and readvertising.

May 22, 1944.

Mr. J. J. McIntosh  
County Attorney  
Rosebud County  
Forsyth, Montana

Dear Mr. McIntosh:

You have requested an opinion of this office relative to the rights of the county and its lessee under the provi-

the lands, and thus refuse to sell; they may decide it is best to sell and to do so at a private sale; under those circumstances they must notify the lessee and give him a chance to purchase at the then appraised value; or they may decide it is in the best interests of the county that the premises be reappraised, readvertised and sold at public sale, in which event neither the lessee nor the person who made the offer of purchase has any preference over the other or any other person who may appear at the sale and bid. In the latter instance the county commissioners are limited only in that they must not sell for less than the reappraised value.

Under the assumed statement of facts you present in your letter, it seems to me your commissioners have not proceeded under that portion of said Chapter 147, which would bind them to give any preferential right to the lessee, in that they did not decide to sell at private sale. They decided to sell at public sale. Therefore, the only notice required to be given the lessee is the notice required by the terms of the lease under which he now is holding the lands.

The only other question raised by the assumed statement of facts you present, is whether the commissioners have correctly put this land up for sale. Under the provisions of either Section 4 of Chapter 171, Laws of 1941, or Chapter 147, Laws of 1943, the commissioners may at any time put land up for public sale which had theretofore been put up for sale but not sold, **by reappraising, readvertising and offering it at public sale.** It is incumbent, however, that each of these separate steps be taken to have a legal sale. According to your assumed statement of facts the commissioners did not reappraise this land. In that event there may be no legal sale and the commissioners may call it off.

If the commissioners correctly proceeded under the proviso in Chapter 147, Laws of 1943, allowing them to reappraise, readvertise and sell at public sale, then the question of the preferential right of the lessee is not involved; the commissioners are then only limited by the provision that they must not sell for less than the reappraised value of the premises. This reappraisal may be the same, less or more than the original reappraisal, but must be

the present fair market value. To comply with the law the reappraisal must have actually been made in good faith.

Therefore, it is my opinion the provision of Chapter 147, Laws of 1943, pertaining to the giving of a preferential right to lessees of land, leased under the provisions of Section 5, Chapter 171, Laws of 1941, to purchase such leased land, does not apply if the county commissioners proceed to sell at public sale the land after reappraising and readvertising.

Sincerely yours,  
R. V. BOTTOMLY  
Attorney General