

Opinion No. 215.**County Commissioners—Royalty and Interest—Tax Deed Lands—Lands.**

Held: Counties upon sale of lands secured through tax proceedings may not reserve more than $6\frac{1}{4}\%$ royalty interests in the gas, oil and minerals produced and saved from said lands.

May 29, 1944.

Mr. Chester E. Onstad
County Attorney
Powder River County
Broadus, Montana

Dear Mr. Onstad:

You have written us asking if the county commissioners may reserve more than $6\frac{1}{4}\%$ royalty interest on sale of county tax deed lands.

Chapter 171, Laws of 1941, governs the powers of the county commissioners in the disposal of county tax deed lands. Paragraph two of Section 2 of Chapter 171, provides the county commissioners may reserve not to exceed six and one-fourth per cent ($6\frac{1}{4}\%$) royalty interest in the oil, gas, and minerals produced and saved from said lands. This paragraph in my estimation is mandatory as to the amount which may be reserved and is conclusive, plain and unambiguous.

In Opinion No. 198, Volume 20, Report and Official Opinions of the Attorney General, it has been held that the counties may not sell the royalties reserved for the reason said Chapter 171 does not so provide, and at no place in our law may authority be found for counties to enter the oil, gas or mining business. It is my belief from reading said Chapter 171, as a whole, it was the intention of the legislature to reserve this royalty interest for the benefit of the county without jeopardizing to any great extent the sale value of the land and also not to reserve such portion of the gas, oil or mineral rights as to foreclose the possibility of development by the purchaser.

Therefore, it is my opinion that counties, upon the sale of lands secured through tax proceedings may not reserve more than $6\frac{1}{4}\%$ royalty interests in the gas, oil and minerals produced and saved from said lands.

Sincerely yours,
R. V. BOTTOMLY
Attorney General