

**Opinion No. 216.****County Commissioners—Royalty and Interest—Lands—Oil, Gas and Minerals.**

Held: County commissioners have no authority to exchange royalty interests reserved under paragraph two of Section 2, Chapter 171, Laws of 1941, for other royalty interests or at all.

May 31, 1944.

Mr. Fred C. Gabriel  
County Attorney  
Phillips County  
Malta, Montana

Dear Mr. Gabriel:

You have requested an opinion of this office relative to county commissioners having authority to exchange royalty interests reserved by counties on the sale of lands under the provisions of paragraph two of Section 2 of Chapter 171, Laws of 1941.

The factual situation you present is as follows: The county sold 160 acres of land under the provisions of Chapter 171, Laws of 1941, and reserved  $6\frac{1}{4}\%$  royalty interest in the oil, gas and minerals produced and saved from said land, under the provisions of said paragraph two of Section 2 of Chapter 171; the purchaser wishes to divide the tract into two 80 acre tracts and trade the county  $6\frac{1}{4}\%$  royalty interest in one 80 acre tract for the county's  $6\frac{1}{4}\%$  royalty interest in the other 80 acre tract.

In Opinion No. 198, Volume 20, Report and Official Opinions of the Attorney General, it was held the counties could not sell the royalty interests reserved under said second paragraph of Section 2 of Chapter 171. This opinion was based on the fact that the statute did not provide for any such sale, and therefore the county commissioners could not be presumed to have such authority. A copy of said opinion is enclosed herewith.

As the county has no authority to sell the royalty interest, it would not have authority to trade or exchange the same. The portion of Section 1 of Chapter 65, Laws of 1933, cited in your letter was incorporated in our codes as Section 2208.1. This section was amended by Chapter 193, Laws of 1939, and said chapter was repealed by Chapter 171, Laws of 1941. The last sen-

tence of Section 5 of Chapter 171 contains a similar provision which reads as follows:

"The county commissioners may also, after any of said lands have been offered for sale and not sold when it is deemed for the best interest of the county, exchange said lands for other lands of equal value where the effect of such exchange would be to acquire land which could be leased or sold to better advantage."

It is to be noted the only authority the commissioners have is to sell the lands which have heretofore been offered and not sold. The  $6\frac{1}{4}\%$  royalty interest was never offered for sale; it was reserved when the lands on which it was retained were sold. Therefore, it would not come within the provision of said last sentence of Section 5 of Chapter 171, even if the county could sell royalty interests reserved.

I am unable to find any direct authority for a sale or exchange of the royalty interests retained by the provisions of said Chapter 171, and therefore believe the principle laid down by the Montana Supreme Court in *Lewis v. Petroleum County*, 92 Mont. 563, 17 Pac. (2nd) 60, to the effect that the board of county commissioners may exercise only such powers as are expressly conferred upon them or which are necessarily implied from those expressed, and in case of a reasonable doubt that it must be held that no such power exists, applies in this case. We must take the law as the legislature has given it to us.

Therefore, it is my opinion that the county commissioners have no authority to exchange royalty interests reserved under paragraph two of Section 2, Chapter 171, Laws of 1941, for other royalty interests or at all.

Sincerely yours,  
R. V. BOTTOMLY  
Attorney General