

Opinion No. 227.

County Commissioners—Counties—
Lands—Sale of Lands—Tax Deed
Lands.

Held: The board of county commissioners may not delegate to the county clerk and recorder or any other officer, agent or employee of the county authority to consummate leases or sales of lands taken by the county through tax deed proceedings. Both real and personal property tax liens against real estate are extinguished by sale of the lands for taxes and purchasers from the county under the provisions of Chapter 171, Laws of 1941, take such real estate free of any tax lien, either real or personal, assessed or levied prior to the county taking tax deed.

July 13, 1944.

Mr. Carl Lindquist
County Attorney
Daniels County
Scobey, Montana

Dear Mr. Lindquist:

You have requested an opinion of this office on the following questions:

"May a board of county commissioners delegate to any county office or county officer such as the county clerk, authority to approve and close transactions dealing with the leasing or sale at private sale of lands which have been acquired by the county through tax deed proceedings and which have been offered at public

sale and no public sale made of the same.

"What proceedings, if any, the county may take with respect to unpaid personal property taxes which show as a lien against the lands acquired or to be acquired by tax deed proceedings."

In answering your first question, I wish to call attention to the following portions of Chapter 171, Laws of 1941:

"Section 4. In the event any of said lands are not sold at such public sale the county commissioners may at any time either again appraise, advertise, and offer the same at public auction or sell the same at private sale at the best price obtainable at not less than ninety per cent (90%) of the last appraised value . . ."

"Section 5. When such lands . . . the county commissioners may, if deemed for the best interests of the the county, lease said lands upon the best terms obtainable for . . ."

From the above quoted portions of Chapter 171, it is specifically stated that the commissioners shall do the selling or leasing. It is a duty imposed upon them by law. Furthermore, in both instances, that is, either in selling or leasing, the commissioners must decide that their action is for the best interests of the county and they must obtain the best terms possible. The above mentioned chapter does not give the commissioners any authority to delegate this power to any other officials, nor may such authority be necessarily implied. See in this respect, 15 Corpus Juris 457, as follows:

"It is well settled that a county board possesses and can exercise such powers and such powers only, as are expressly conferred on it by the constitution and the statutes of the state, or such powers as arise by necessary implication from those expressly granted."

See also *Lewis v. Petroleum County*, 92 Mont. 563, 17 Pac. (2d) 60, 92 Mont. 565, as follows:

"The principle is well established that the board of county commissioners may exercise only such powers as are expressly conferred upon it or which are necessarily implied from

those expressed, and that where there is a reasonable doubt as to the existence of a particular power in the board of county commissioners, it must be resolved against the board, and the power denied."

Furthermore, the holding of these private sales are not the same as holding public auctions. The board, in making private sales and leases, is bound to exercise discretion, that is, it must not only decide it is for the best interest of the county to make the particular sale or lease but must obtain the best price possible. Therefore, they may not delegate this duty. See in this respect 15 Corpus Juris, 465, as follows:

"The right of a county board to delegate its authority depends on the nature of the duty to be performed. Powers involving the exercise of judgment and discretion are in the nature of public trusts and cannot be delegated to a committee or agent."

In Opinion No. 210, Volume 20, Report and Official Opinions of the Attorney General, this office held in accordance with the last above citation in a relative matter to the question you present, as follows:

"On the other hand, however, the duty of fixing the amount of rent and amount of repairs to property would entail judgment and discretion and may not be delegated by the board, but must be performed by the board itself."

In answering your inquiry, I wish to call your attention to Section 2153, Revised Codes of Montana, 1935, as amended by Chapter 97, Laws of 1937. Said chapter states that all personal taxes shall be a lien against real property, save for certain exceptions, which exceptions are not involved in your controversy. This chapter gives the county assessors authority to allow the personal property tax to be made a lien against the land and also makes such tax a lien.

Under Section 2182, Revised Codes of Montana, 1935, the county treasurer shall give notice at certain designated times that all property in the county, upon which delinquent taxes are a lien, will be sold at public auction, unless prior to said time said delinquent taxes, together with all interest, penalties and costs due thereon are paid. Chapter

171, Laws of 1941, provides the sale price received from the sale or lease of lands taken by tax deed shall be credited to the funds of the county in the same way the taxes for which the land was sold would have been paid had the taxes not become delinquent, or if the sale price is not sufficient for full payment that the money received be pro rated. Section 2211, Revised Codes of Montana, 1935, as amended by Chapter 17, Laws of 1941, provides for piece-meal redemption from tax sale. It is provided in that chapter that the personal property taxes which are a lien on the entire tract taken on tax sale be pro rated and proportionally paid on any piece-meal redemption. Section 215, Revised Codes of Montana, 1935, provides in part as follows:

"All deeds heretofore or hereafter executed more than three years after any tax sale shall be deemed to convey to the grantee the absolute title to the lands described therein as of the date of the expiration of three years following the date of sale, including all the right, title, interest, estate, lien, claim and demand of the state of Montana, and of the county, in and to said real estate . . ."

In view of the above cited sections and chapters of our laws, it seems the legislature intended that personal property taxes should, if there is adequate security, be made a lien against the owners' real estate, if any, but that the assessor may, if he is of the opinion the tax is not adequately secured, certify the personal property tax to the county treasurer, who in accordance with law proceeds directly against the personal property to recover the tax. Thus, if the assessor determines that the personal property tax is adequately secured, then such taxes merge with the real estate taxes as one lien against the real estate and when the real estate is sold, it shall be sold for the entire taxes, both personal and real such as constitutes the tax lien.

Therefore, it is my opinion:

1. The board of county commissioners under the present law, cannot delegate to the county clerk and recorder or any other officer, agent or employee of the county the right to consummate leases or sales of lands taken by the county through tax deed proceedings.

2. The lien of both personal and real property taxes against real estate are extinguished by the sale of lands for taxes, and tax deed lands sold by the county under the provisions of Chapter 171, Laws of 1941, under the facts you have given me in this case, are free in the hands of the purchaser, from the county, of any and all liens of the state or county for taxes, either real or personal, which were levied prior to the taking of tax deed by the county.

Sincerely yours,
R. V. BOTTOMLY
Attorney General