

Dear Mr. Neel:

You have requested my opinion concerning Substitute Senate Bill No. 50, on the following proposition:

"A is the lessee of county land which is appraised at \$5.00 per acre. B appears before the board of county commissioners and offers \$7.00 per acre for said land.

"Does the board have the right at this time to re-appraise said land at \$7.00 per acre, or more, and advertise same to be sold at public auction?"

Substitute Senate Bill No. 52, is now found as Chapter 147, Laws of 1943. The act was signed by the Governor and became effective on March 2, 1943. Section 1 of the act provides as follows:

"Whenever tax deed lands now held, or hereafter acquired, by any county of this state, have been leased pursuant to the provisions of Section 5, Chapter 171 of the Laws of the Twenty-seventh Legislative Assembly, and thereafter the Board of County Commissioners shall receive an offer for the purchase of said lands under the provisions of Section 4, Chapter 171 of the Laws of the Twenty-seventh Legislative Assembly, the said board shall by registered mail, notify the lessee, who shall have a period of thirty (30) days after the mailing of such notice within which he may purchase the leased property at the appraised value thereof. Providing that nothing herein contained shall prohibit the board from, at any time, reappraising, readvertising and offering such land at public sale under the provisions of Section 1, Chapter 171, of the Laws of the Twenty-seventh Legislative Assembly."

There is no doubt the act discloses the intention of the legislature to give the lessee a preferential right when the board of county commissioners has received an offer for purchase of land under the provisions of Section 4, Chapter 171, Laws of 1941, providing for a private sale at best price obtainable at not less than ninety per cent (90%) of the last appraised value. It would appear the legislature, in the enactment of Chapter 171, Laws of 1941, was not considering a situation where a price in excess of the appraised value was offered, but rather, it was a limitation

**Opinion No. 27.**

**County Commissioners—Tax Deed Lands—Sales—Appraisal Preferential Right.**

Held: Where A is the lessee of county land which is appraised at \$5.00 per acre and B appears before the board of county commissioners with an offer of \$7.00 per acre for said lands, the board of county commissioners has the right under Chapter 147, Laws of 1943, to reappraise the land and advertise and offer the same to be sold at public auction.

March 29, 1943.

Mr. Harley Neel, Chairman  
Board of County Commissioners  
Judith Basin County  
Stanford, Montana

on the board and a safe guard to prevent a sale at a low price.

I do not believe it was the intention of the legislature to give the lessee the right to purchase at the appraised value in every case, but only in cases where the board of county commissioners received an offer of purchase in conformity with Section 4, Chapter 171, Laws of 1941—that is, at the appraised value, or not less than ninety per cent of the appraised value. It was apparently contemplated that, where an offer was made of ninety per cent of the appraised value, or even the appraised value was offered, the lessee should have the preferential right to purchase at the appraised value.

Where, however, as in the instant case, an offer is made of more than the appraised value, there is no preferential right in the lessee. The offer is not under the provisions of Section 4, Chapter 171, Laws of 1941, and the board of county commissioners is not bound to sell to the lessee at the appraised value. Where such is the case, the board of county commissioners, may, under Chapter 147, at any time, re-appraise, readvertise and offer such land for public sale under the provisions of Section 1, Chapter 171, Laws of 1941.

Hence, under the facts given, I am of the opinion the board of county commissioners has the right, under Chapter 147, Laws of 1943, to re-appraise the land and advertise and offer the same to be sold at public auction. The intent of the law is that at such sale, no sale shall be made for a price less than the fair market value.

Sincerely yours,  
R. V. BOTTOMLY  
Attorney General