

Held: It is mandatory for the board of county commissioners to reserve not to exceed the 6¼% royalty in oil and gas and minerals in tax deed lands sold by the county.

April 5, 1945.

Mr. Thomas Dignan
County Attorney
Valley County
Glasgow, Montana

Dear Mr. Dignan:

You have requested an opinion of this office asking if the board of county commissioners must reserve not to exceed 6¼% royalty interest in the oil, gas and mineral in the tax deed lands sold by a county under the provisions of Section 2, Chapter 171, Laws of 1941. The only question involved is the meaning to be given to the phrase, "the county may reserve . . ."

Whether it is mandatory for the county commissioners to reserve the royalty interest designated depends upon the interpretation to be given to the word "may" as used in the statute. Our Supreme Court has definitely adopted a rule to be followed in interpreting the word "may" when used in a statute. The rule was first enunciated in the case of *Montana Ore Purchasing Co. v. Lindsey*, 25 Mont. 24, and since followed consistently by the court. It is as follows:

"This word is sometimes permissive only; sometimes it is imperative. Legislative intent determines whether it is directory or mandatory. According to its natural and usual signification, the word 'may' is enabling and permissive only, and so it must be interpreted where no right of or benefit to the public, nor right of persons other than the one upon whom the permission is conferred, depends upon giving to it the obligatory meaning; but the word is interpreted to mean 'shall' or 'must' whenever the rights of the public or of third persons depend upon the exercise of the power or performance of the duty to which it refers. In those cases where the public or persons possess the right to require that the power be exercised, the word is imperative and mandatory, being the equivalent of 'shall' or 'must'." (Emphasis mine.)

Opinion No. 25.
County Commissioners—Tax Title
Lands—Reservation of Oil, Gas and
Minerals—Oil, Gas and Minerals.

See also State ex rel. Steifel v. District Court et al., 27 Mont. 298, 304, 96 Pac. 337; Durland v. Prickett, et al., 98 Mont. 399, 406, 39 Pac. (2d) 652.

In ascertaining the intention of the legislature in enacting Chapter 171, it is interesting to note the legislature in the title of the act used the following words: "Permitting Counties to Reserve Oil, Gas, and Mineral Rights . . ." Prior to this enactment the county commissioners had no authority to reserve royalty.

It is significant that—in granting the board authority to lease these lands, and to reserve the royalty of 12½% as provided in Section 5 of Chapter 171—the legislature used the word "may" but followed it with the words, "if deemed for the best interests of the county," or "at the discretion of the board," or "when it is deemed for the best interests of the county." No such qualifying words are used in Section 2, wherein it is provided the county may reserve not to exceed 6¼% royalty.

Here there are public interests and public rights depending upon the performance of the duty devolving upon the board of county commissioners, which appear to me to bring the matter squarely within the rule of the Supreme Court above quoted.

I am of the opinion that, considering the entire statute, its purpose and intent, and applying the rule above referred to, it follows that "may" means "must" and it is the duty of the board of county commissioners to reserve not to exceed the 6¼% royalty in oil and gas and minerals in such lands sold by the county.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General