

May 21, 1945

Mr. Denzil R. Young
County Attorney
Fallon County
Baker, Montana

Dear Mr. Young:

You have requested my opinion concerning the construction of Chapter 144, Laws of 1945, and have asked if the above chapter will prevent the sale of tax deed land held by the county for six months from the effective date of the act, February 28, 1945.

The act applies to three classes of tax deed land:

1. Land which the county holds by tax deed and which was offered for sale at public auction and not sold.

2. Land held by the county under tax deed prior to February 28, 1945, and which has not been offered for sale.

3. Land which was not acquired by tax deed by the county prior to February 28, 1945, but which will be acquired by the county under a tax deed subsequent to February 28, 1945.

The first and second classes of land are considered in subsection (a) of Chapter 144, which states:

"That all persons whose property has heretofore been deeded to the county, or the successors in interest of such persons, or legal representatives, who have acquired any preferential right to purchase such property, prior to the date fixed for sale of such property, or while the title to the same remains in the county . . . are hereby given six months after the effective date of this act in which to exercise such preferential right to so repurchase said property . . ." (Emphasis mine.)

The above provision grants the right of purchase for six months from February 28, 1945, to all persons whose property has been conveyed to the county and which the county still owns. It would seem the use of the words "have acquired any preferential right to purchase" would grant a new right of purchase to those persons whose preferential right of purchase was terminated by an offer of sale by the county under Chapter 171, Laws of 1941. It was held by this office in Opinions No. 64 and No. 90, Volume 19, Report and Official Opinions of the Attorney Gen-

Opinion No. 40

Tax Deed Lands—Right of Purchase— Contracts, Installment — Installment Contracts—Lands, Tax Deed.

Held: Under the provisions of Chapter 144, Laws of 1945:

1. Land held by the county under tax deed and which has been offered for sale and not sold prior to the effective date of Chapter 144, Laws of 1945, may be purchased by the taxpayer, or his successor in interest, or legal representative, during the six months operative period of Chapter 144, or until midnight of August 28, 1945.

2. Land held by the county under tax deed and which has not been offered for sale may be purchased by the taxpayer, or his successor in interest, or legal representative, during the six months period following the effective date of Chapter 144, Laws of 1945, or until midnight of August 28, 1945.

3. Under Section 1 of Chapter 144, Laws of 1945, the land not yet acquired by the county by tax deed on February 28, 1945, the effective date of the act, may only be purchased by the taxpayer, or his successor in interest, or legal representative, at any time before the time fixed for the first offering of said property for sale.

4. Lands in the first and second classes set out above may not be offered for sale by the county except to persons whose property was deeded to the county before February 28, 1945, or such persons who are successors in interest or legal representatives, until after August 28, 1945.

eral, that under Chapter 171, Laws of 1941, when a county first offers land for sale, and it is not sold, the preferential right is terminated. However, the use of the past tense in the above quoted phrase, and also that portion which reads "or while the title to the same remains in the county" grants a new preferential right of purchase to those whose property has been conveyed to the county and once offered for sale and not sold.

The second class of land—that is, land which is held by the county under tax deed, and has not been offered for sale—also comes within the provisions of subsection (a). The legislature by stating "that all persons whose property has heretofore been deeded to the county . . ." and title thereto remains in the county shall have the right of purchase, covers this class of property also.

The third class of land—that is, land not yet acquired by the county by tax deed, but will be acquired by tax deed after February 28, 1945—comes within Section 1 of Chapter 144. Under the terms of this section purchase may be made by the taxpayer, his successor in interest or legal representative "at any time before the time fixed for the first offering of said property for sale . . ."

The most perplexing problem presented by Chapter 144 is that subsection (a) provides the preferential right of purchase be exercised "under the provisions of Section 2235, Revised Codes of Montana, 1935, as amended by Chapter 181, Session Laws of Montana, 1939 . . ." Chapter 181, Laws of 1939, was specifically repealed by Chapter 171, Laws of 1941, and in 50 Am. Jur. 532, it is stated:

"Aside from matters and transactions past and closed, and aside from the use of repealed statutes as an aid in the interpretation of existing statutes, the general rule is that where a statute is repealed without a re-enactment of the general law in substantially the same terms, and there is no saving clause or a general statute limiting the effect of the repeal, the repealed statute, in regard to its operative effect, is considered as if it had never existed. Of course, the courts have no power to perpetuate a rule of law which the legislature has repealed." (Emphasis mine.)

Inasmuch as Chapter 181, Laws of 1939 has been repealed and is therefore inoperative, the method of payment for land purchased by former owners comes within the provisions of Section 2 of Chapter 171, Laws of 1941, which was not repealed by Chapter 144, Laws of 1945, and which is still in existence and operative. We treat the reference to the repealed law as illustrative of the legislative intent only.

The reference in Chapter 144 to Chapter 181, Laws of 1939, while unfortunate, does not defeat the purpose of Chapter 144. The legislature indicated in other provisions of Chapter 144 that purchases may be made by installment contracts and Section 2, Chapter 171, Laws of 1941, provides the terms and conditions of such method of payment. Such a construction is in accord with the rule expressed in *State v. Millis*, 81 Mont. 86, 261 Pac. 885, wherein our court said:

"Statutes are to be construed so as best to effectuate the object of the legislature."

It is therefore my opinion that under the provisions of Chapter 144, Laws of 1945:

1. Land held by the county under tax deed and which has been offered for sale and not sold prior to the effective date of Chapter 144, Laws of 1945, may be purchased by the taxpayer, or his successor in interest, or legal representative, during the six months operative period of Chapter 144, until midnight of August 28, 1945.
2. Land held by the county under tax deed and which has not been offered for sale may be purchased by the taxpayer, or his successor in interest or legal representative, during the six months period following the effective date of Chapter 144, Laws of 1945, or until midnight of August 28, 1945.
3. Under Section 1 of Chapter 144, Laws of 1945, the land not yet acquired by the county by tax deed on February 28, 1945, the effective date of the act, may only be purchased by the taxpayer, or his successor in interest, or legal representative, at any time before the time fixed for the first offering of said property for sale.
4. Lands in the first and second classes set out above may not be offered for sale by the county except to persons whose property was deeded to

the county before February 28, 1945, or such successors in interest or legal representatives, until after August 28, 1945.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General