

Opinion No. 60.**Tax Deed Lands—Right of Purchase by Former Owner—Leases—Lands, Tax Deed.**

Held: Chapter 144, Laws of 1945, does not have a retrospective effect and a purchaser who was a former owner purchases the land subject to outstanding leases and the terms thereof. A purchaser of land under Chapter 144, Laws of 1945, whose land was held by the county by tax deed prior to the effective date of Chapter 144 must pay the fair market value thereof as fixed by the board of county commissioners.

August 6, 1945.

Mr. Homer A. Hoover
County Attorney
McCone County
Circle, Montana

Dear Mr. Hoover:

You have requested my opinion concerning two questions which arise under Chapter 144, Laws of 1945.

1. Does a purchaser and former owner under Chapter 144, Laws of 1945, whose property was held by the county under tax deed and leased by the county receive the property unencumbered by the lease?

2. Does a purchaser and former owner under Chapter 144, Laws of 1945, have to pay penalty and interest whose property was acquired by the county by tax deed in the year 1939 for an amount which did not include penalty and interest for the reason a moratorium law relieved the redemptioner at that time from paying penalty and interest?

Your first question involves Section 11 of Article III of the Montana Constitution, which reads as follows:

“No ex post facto law nor law impairing the obligation of contracts, or making any irrevocable grant of special privileges, franchises, or immunities, shall be passed by the legislative assembly.”

A lease given by the county under the provisions of Chapter 171, Laws of 1941, is also a contract between the

lessee and the county. Before the lease could be made by the county, the land in question must have been offered for sale and not sold.

Subsection (a) of Section 1, Chapter 144, Laws of 1945, provides that a taxpayer whose property has been conveyed to the county by tax deed and is held by the county has a preferential right to repurchase the property. If this right is exercised and the taxpayer recovers the property unencumbered by the lease, then the constitutional provision above quoted would be violated. This principal was recognized in *State ex rel City of Billings v. Osten*, 91, Mont. 76, 5 Pac. (2d) 562, wherein our court said:

“The validity and effect of the tax deed is to be determined by statutes in force when the sale was made and not by statutes subsequently enacted, for, except as to governmental agencies, the sale of land for delinquent taxes constitutes a contract between the purchaser and the state, the obligation of which cannot be impaired to the disadvantage of the purchaser by subsequent legislation.”

In 11 Am. Jur. 1194, the text states:

“A constitutional provision prohibiting retrospective laws covers laws which create a right where none before existed and which relate back so as to confer on a party the benefit of such right, and covers also all such laws as take away or impair any vested right acquired under existing laws, create a new obligation, impose a new duty, or attach a new disability in respect of transactions or considerations already past. A retrospective statute which extends the time for redemption from a judicial sale, tax sale, or mortgage foreclosure sale or which gives such a right where none existed before is unconstitutional.”

It must be remembered that the right of redemption was terminated by the taking of the tax deed by the county. (*Blackford v. Judith Basin County*, 109 Mont. 578, 98 Pac. (2d) 872.) Chapter 144, Laws of 1945, gave a preferential or new right to the former owner to purchase the property and if this chapter is given a retrospective effect so as to deprive a lessee of the land of his full term, the above quoted constitutional provision would be violated.

The fact the lease is unrecorded would be immaterial as the lessee has a vested right and the retrospective operation would deprive him of this property right.

Your second question comes within the provisions of Subsection (a) of Chapter 144, Laws of 1945, which was considered by this office in Opinion No. 40, Volume 21, Report and Official Opinions of the Attorney General. In Opinion No. 40, it was held that Chapter 181, Laws of 1939, was inoperative as it was repealed by Chapter 171, Laws of 1941, and that the method of payment by former owners comes within the provisions of Section 2 of Chapter 171, Laws of 1941. Section 2 of Chapter 171 provides in part as follows:

“Such sale shall be made for cash, or in the case of real property, on such terms as the board of county commissioners may approve . . .”

The term “such sale” refers back to Section 1 of Chapter 171, which was amended by Section 1 of Chapter 144, Laws of 1945, and the sale price shall be “the fair market value thereof, as determined by the board of county commissioners prior to making the order of sale.”

It is therefore my opinion that Chapter 144, Laws of 1945, does not have a retrospective effect and a purchaser who was a former owner purchases the land subject to outstanding leases and the terms thereof.

It is also my opinion that a purchaser of land under Chapter 144, Laws of 1945, whose land was held by the county by tax deed prior to the effective date of Chapter 144 must pay the fair market value thereof as fixed by the board of county commissioners.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General