

the amount due for taxes, penalty, interest and costs.

July 25, 1947

Board of County Commissioners
Judith Basin County
Stanford, Montana

Attention:
Mr. P. B. McAllister,
Chairman

Gentlemen:

You have requested my opinion on the following questions:

1. Can land, tax delinquent for the year 1946 be put up for bids and auctioned off to the highest bidder or must it be sold for the amount due for taxes, penalty and interest?
2. If sold for more than this amount what would be done with the balance of the money from the sale over and above the taxes, penalty and interest?
3. What amount would have to be paid on redemption if the land were sold for more than taxes, penalty and interest?

Section 2191, Revised Codes of Montana, 1935, provides, in part:

“**** the county treasurer shall sell the said real estate so offered for sale . . . and in case there is no purchaser in good faith for the same . . . on the first day that the property is offered for sale, then the . . . property assessed must be struck off to the county as the purchaser. . . .”

Section 2192, Revised Codes of Montana, 1935, although relating to resale, indicates clearly the legislative intent as to sale price of delinquent tax land:

“If the purchaser does not pay the tax and costs before ten o'clock p. m. of the following day, the property, on the next sale day before the regular sale, must be resold for taxes and costs.” (Emphasis mine).

In Section 2194, Revised Codes of Montana, 1935, provision is made for issuance by the treasurer of a cer-

Opinion No. 50

Tax Delinquent Land, Sale of—Sale of Tax Delinquent Land—County Treasurer—Certificate of Tax Sale—Bids for and Auction of Tax Delinquent Land.

Held: Land sold for delinquent taxes, where a certificate of tax sale is issued to the purchaser, cannot be put up for bids and auctioned off to the highest bidder, but must be sold for

tificate of tax sale. The section is as follows:

"After receiving the amount of taxes and costs, the treasurer must make out in duplicate a certificate, dated on the day of sale, stating (when known) the name of the person assessed, a description of the land sold, the amount paid therefor, that it was sold for taxes, giving the amount and the year of the assessment, and specifying the time when the purchaser will be entitled to a deed." (Emphasis mine).

The section indicates the legislative intent to have the treasurer issue the certificate of tax sale upon "receiving the amount of taxes and costs." Also see Section 2207, Revised Codes of Montana, 1935, as amended by Chapter 11, Laws of 1947.

In *Calkins v. Smith*, 106 Mont. 453, 457, 78 Pac. (2d) 74, the Supreme Court of Montana stated:

"Chapter 199, sections 2169 et seq., Revised Codes, outlines the procedure for the collection of property taxes and the enforcement of tax liens. The provisions are mandatory and exclusive. (State ex rel. Tillman v. District Court, 101 Mont. 176, 53 Pac. (2d) 107, 103 A.L.R. 376; State ex rel. Spokane & Eastern Trust Co. v. Nicholson, 74 Mont. 346, 240 Pac. 837)." ("An exception to the above is noted, not here pertinent.)

From the above, I conclude that land sold for delinquent taxes under section 2169, et seq., Revised Codes of Montana, 1935, where a certificate of tax sale is issued to the purchaser, must be sold for the amount due for taxes, penalty, interest and costs. In the instant case, where one year's taxes are delinquent, the sale cannot be for more than the taxes, penalty, interest and costs for the one year. This being the case, the remaining two questions will not arise.

It is, therefore, my opinion that land sold for delinquent taxes, where a certificate of tax sale is issued to the purchaser, cannot be put up for bids and auctioned off to the highest bidder, but must be sold for the

amount due for taxes, penalty, interest and costs.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General