

Opinion No. 113.**Tax Deed Lands—Counties, Royalty Reservations—Distribution of Monies Received from Royalty Reservations.**

HELD: The proceeds of the $6\frac{1}{4}\%$ royalty reservation retained by the county upon the sale of tax deed lands are something in excess of the proceeds of the sale and should be credited to the General Fund of the county.

December 30, 1954.

Mr. Stanley Nees, Chairman
Board of County Commissioners
Roosevelt County
Wolf Point, Montana

Dear Mr. Nees:

You have requested my opinion upon the following question:

“Into what county fund or funds are monies to be placed which are received from the $6\frac{1}{4}\%$ royalty reservation in favor of the county on the sale of tax deed lands?”

Section 84-4191, R.C.M., 1947, provides that the county may reserve a royalty interest of not to exceed $6\frac{1}{4}\%$ in the oil, gas, other hydrocarbons and minerals produced and saved from the land. That statute in part provides as follows:

“ * * *

. . . the chairman of the Board of County Commissioners shall execute a deed attested to by the county clerk to the purchaser, or his assigns, or such other instruments as shall be sufficient to convey all of the title of the county in and to the property so sold, provided that the county may in the discretion of the Board of County Commissioners reserve not to exceed six and one-fourth per cent

(6¼%) royalty interest in the oil, gas, other hydrocarbons and minerals produced and saved from said land.”

No direct provision is made in the statutes for the distribution of this money. Section 84-4195, R.C.M., 1947, provides a method for the distribution of monies derived from the sales of tax deed lands and monies of those tax deed lands which are still held by the county.

The 6¼% royalty reservation is neither a lease nor a sale.

Section 4481.3, R.C.M., 1935, carried a provision for the distribution of the 6¼% royalty interest. That section provided:

“All proceeds received from said mineral reservations, or of any part or parts thereof, shall be applied, in the case of tax deed lands, in the same manner that moneys received from the sale of tax deed lands are now or hereafter required to be applied. Where the mineral reservations are in lands which represent a fund or funds, or in which a fund or funds have an interest (other than tax deed lands), the proceeds shall be applied to such fund or funds to the extent of such representation or interest, the balance to be credited to the general fund of the county. In all other cases the proceeds shall be credited to said general fund.”

Section 4481.3, *supra*, was repealed by Chapter 171, Laws of 1941. Since that time, there has been no statutory provision for the distribution of these royalty monies. It is a principle of statutory construction that the repeal of a statute or a portion of a statute indicates an intention on the part of the legislature to do away with the requirements of the statute or portion thereof repealed. (*Westchester Fire Ins. v. Sullivan*, 45 Mont. 18, 121 Pac. 472.)

The system provided for the distribution of monies derived from the sale of tax deed lands is provided by Section 84-4195 (b), (c), (d), *supra*. These subsections provide as follows:

.. “(b) Upon a sale of such property the proceeds of each sale up to the amount of ten dollars (\$10.00) shall be credited to the county general

fund to reimburse such for expenditures made therefrom in connection with the procurement of tax deed and holding sale.

“(c) Upon a sale of the property if there be any amount remaining of such proceeds after the payment of the amount specified in subdivision (b) hereof and such remainder is in excess of the aggregate amount of all taxes and assessments accrued against such property for all funds and purposes, without penalty and interest, then so much of such remaining proceeds shall be credited to each fund or purpose, as the same would have received had such taxes been paid before becoming delinquent and all excess shall be credited to the general fund of the county.

“(d) Upon such sale if there shall be any amount remaining of such proceeds after the payment of the amount specified in subdivision (b) hereof and such remainder is less in amount than the aggregate amount of all taxes and assessments accrued against such property for all funds and purposes, without penalty or interest, such proceeds shall be prorated between such funds and purposes in the proportion that the amount of taxes and assessments accrued against such property for each such fund or purpose bears to the aggregate amount of taxes and assessments accrued against such property for all funds and purposes.”

Under these provisions when a sale of tax deed land is made, the monies derived from the sale are distributed in the same manner as the taxes upon the land would have been distributed had the taxes been paid before becoming delinquent. Any excess is to be credited to the General Fund of the county. The actual question in this case is whether the monies derived from the royalty reservation are to be treated in the same manner as the proceeds of a sale of part of the land or as the excess over and above the proceeds of the sale. In the ordinary course of procedure when tax deed land is sold, the account is closed. If the monies derived from the royalty reservation are to be treated as proceeds from a sale, these accounts will have to be kept open for many years.

It has been held by this office, 20 Opinions of the Attorney General 252, No. 198, that the county's royalty interest may not be sold. It has been held by 20 Opinions of the Attorney General 278, No. 216, that the royalty interest could not be traded or exchanged. It was the intention of the legislature, as declared in these opinions, that the royalty reservation owing to the county should be an asset which could not be handled in any of the normal fashions in which tax deed lands are treated. The reservation is an interest which may become valuable or may not, depending upon events far in the future. Since it may not be sold, the proceeds cannot logically be treated as the proceeds of a sale. It is not a lease. It is an asset of the county remaining after all of the county's disposable interest in the land is gone.

It is therefore my opinion that the proceeds of the $6\frac{1}{4}\%$ royalty reservation retained by the county upon the sale of tax deed lands are something in excess of the proceeds of the sale and should be credited to the General Fund of the county.