

penalties, or interest other than those due at the time of the taking of the tax deed.

October 3, 1953.

Mr. Cecil N. Brown
County Attorney
Prairie County
Terry, Montana

Dear Mr. Brown:

You have asked my opinion upon the following questions:

1. When a county has acquired land by tax deed, and the former owner re-purchases such land by payment of taxes, penalty, and interest prior to the date set for sale of the land, under Section 84-4190, R. C. M., 1947, may the county reserve $6\frac{1}{4}\%$ royalty on oil, gas and minerals saved on the land, pursuant to Section 84-4191, R. C. M., 1947?

2. If the county may reserve the royalty, may it also assess and collect taxes for the period of time between the taking of the tax deed and the sale?

Sections 84-4190 and 84-4191, R. C. M., 1947, were part of Chapter 171, Laws of 1941. Section 1 of that Chapter became Section 84-4190; Section 2 became 84-4191, *supra*. They must, therefore, be read and construed together. (*Nadstanek vs. Trask*, 130 Or. 669, 281 P. 840, 67 A. L. R. 599.)

Section 1, Chapter 171, *supra*, now Section 84-4190, *supra*, provides in part that:

" . . . the taxpayer or successor in interest, or legal representative, whose property shall hereafter be deeded to the county, may purchase such property subject to the reservations hereinafter provided . . . (Emphasis supplied.)

The only reservations provided for by that Act were contained in that portion of Section 2, Chapter 171, *supra*, now Section 84-4191, *supra*, which provides:

Opinion No. 45.

**Taxation — Tax Deeds — Preferential
Right to Re-Purchase—Mineral
Reservations—Counties—
Oil and Gas.**

HELD: 1. A county may reserve a $6\frac{1}{4}\%$ royalty interest on preferential sales of tax deed lands under Section 84-4190, R. C. M., 1947.

2. A county may not charge the purchaser at a preferential sale under Section 84-4190, R. C. M., 1947, any taxes,

"If a sale is made on terms, the chairman of the board of county commissioners shall execute a contract containing such terms as shall be provided by a uniform contract prescribed by the board of equalization and upon payment of the purchase price in full together with all interest which may become due on any installment or deferred payments, 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 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."

The reservation referred to in Section 84-4190, *supra*, is clearly the reservation of 6¼% royalty interest provided for in Section 84-4191, *supra*. Thus, it is evident that the county may reserve the 6¼% royalty interest on preferential sales under Section 84-4190, *supra*.

Your second question concerns the procedure to be followed during the time the property is held by the county after taking a tax deed, and before it is sold. It is provided by Section 84-4186, R. C. M., 1947, that property sold at tax sale must be assessed for each succeeding year, whether or not it is sold to the county, and if such subsequently assessed taxes are not paid, the property must be again offered for sale. In such cases, the property may be redeemed by the former owner by payment of all taxes, penalties, and interest assessed both before and after the sale, "within thirty-six (36) months from the date of purchase, or at any time prior to the giving of the notice and the application for a deed as provided in this Act." (Section 84-4132, R. C. M., 1947.)

This right of redemption, however, is cut off by the taking of the tax deed in the name of the county. Section 84-4170, R.C.M., 1947, provides that the tax deed conveys absolute title to the grantee. The right of the former owner to purchase the property from the

county for the amount of taxes, penalties and interest due on the land at the time of taking of the tax deed is a special statutory right. In *Beckman Bros. v. Weir*, 120 Mont. 305, 184 Pac. (2d) 347, it was said:

"Preferential Right to Purchase. In addition to the right to redeem the property before the issuance of tax deed the law gives to the former owner the preferential right to purchase the property from the county after the issuance of tax deed by complying with the provisions of Section 2235, Revised Codes, as amended by subsequent legislative enactments. The purchase of tax acquired property from the county by the former owner is not a "redemption" (*Blackford v. Judith Basin County*, 109 Mont. 578, 98 Pac. (2d) 872, 126 A. L. R. 639) and should not be confused with a redemption."

After the issuance of the tax deed, the title of the county is absolute. Section 84-4190, *supra*, specifically provides that the amount which the former owner shall pay is:

"... the full amount of the taxes, penalties and interest due on said land at the time of taking said tax deed . . ."

It is, therefore, my opinion that a county may reserve a 6¼% royalty interest on preferential sales under Section 84-4190, R. C. M., 1947.

It is also my opinion that the county may not charge the purchaser at a preferential sale under Section 84-4190, *supra*, any taxes, penalties, or interest other than those due at the time of the taking of the tax deed.