

Opinion No. 79.**Counties—Tax Deeds—Reservations—
Royalty Interests — Retained
Rights of the County.**

HELD: Counties which issued tax deeds during the period from March 19, 1941, to March 3, 1949, reserving to the county a $6\frac{1}{4}\%$ royalty interest in the oil, gas and minerals produced and saved from said lands have effectively reserved those interests in the county.

May 24, 1954.

Mr. Robert T. Hoover
County Attorney
McCone County
Circle, Montana

Dear Mr. Hoover:

You have referred to this office an opinion request regarding tax deed lands, deeds issued during the period March 19, 1941, to March 3, 1949. You state that the contracts for the sale of these properties on terms as provided in Section 84-4191, R. C. M., 1947, did not contain provisions reserving to the county, the grantor, a royalty interest as provided by the statute. You state further that upon performance and payment of the contract, the county issued deeds to the vendees reserving in the county a $6\frac{1}{4}\%$ royalty interest in the oil, gas, and minerals produced and saved from the said lands.

You then ask:

“What rights, if any, does McCone county have by reason of the reservation clause inserted in its deed?”

The pertinent portion of Section 84-4191, R. C. M., 1947. (prior to amendment by Chapter 187, Laws of 1949) is herein set forth:

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"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 ($6\frac{1}{4}\%$) royalty interest in the oil, gas, and minerals produced and saved from said land."

It is clear that contracts for the tax deeds are to be drafted in accordance with the provisions of the statute. When sales are made on terms, the terms should be those contemplated by the statute. The statute does not require that the contract contain a royalty reservation, but calls for uniform terms. The portion of the statute providing for royalty reservations in the counties upon the execution by the counties of the various deeds is incorporated by implication in the various contracts therefor. All of those contracts were entered into with knowledge in the buyer that the county must reserve a $6\frac{1}{4}\%$ royalty interest when the deeds were executed. See 21 Opinions of the Attorney General 28, No. 25, the holding by Justice Bottomly with which we are in full accord.

The buyer had either actual knowledge or is presumed to contract and purchase with knowledge of the law. Here the county deed reserved the royalty interest in accordance with the statute and the county does retain that interest. It is a fundamental maxim of law that the parties contract with reference to the law in force. *Snider v. Yarbrough*, 43 Mont. 203, at 207. 115

Pac. 41; *Moses v. School District No. 58 of Lincoln County*, 107 Mont. 300, 86 Pac. (2d) 407.

It is my position that the various contracts are made in conformity with the statutes and contain either expressly or by implication the clause as provided by statute that upon the execution of the deed the county may reserve to the county the royalty interest as heretofore mentioned. Therefore, in spite of silence in the contracts, deeds containing the reservation, as here, are proper and the county retains its interest.

It is, therefore, my opinion that the various vendees contracted with the county subject to the regulations provided by law; that the vendees knew or should have known of the reservation and accepted the executed deeds containing such reservations; that such deeds are proper and the county has properly retained its royalty interest and that the county has that interest in the oil, gas and mineral rights.