

Opinion No. 44**Taxation—Tax Deed Lands—Public
and Private Sales of Tax
Deed Lands**

HELD: 1. A Board of County Commissioners may not sell property acquired by tax deed after reappraisal without first readvertising the property for sale at public auction.

2. There cannot be a private sale of tax deed lands unless the property so sold has previously been offered for sale at public auction at the same appraised price.

3. It is the duty of the board of county commissioners to set the appraised value to tax deed lands at the fair market value, and any sale made at less than the fair market value is in violation of the duty of the commissioners to secure for the county the best possible price.

4. A board of county commissioners need not reappraise property before selling it at private sale, but must offer any tract of tax deed land at public sale after any reappraisal

before offering it for private sale at that price.

5. It is the duty of a board of county commissioners to reappraise tax deed property whenever the appraised value does not reflect the fair market value.

6. The provisions of Section 16-1009, R.C.M., 1947, apply only to those tax deed properties which have a value of less than fifty dollars (\$50.00) and have been offered at least once at public auction under the provisions of Section 84-4190, R.C.M., 1947.

December 19, 1955.

Mr. R. E. Towle
Superintendent of Banks
State Capitol Building
Helena, Montana

Dear Mr. Towle:

You have requested my opinion upon the following questions:

1. Can a board of county commissioners sell property acquired by tax deed after reappraisal, without first readvertising the property for sale at public auction?

2. Can a board of county commissioners sell at private sale to individuals in advance of making appraisal of tax deed property?

3. Do the provisions of Section 16-1009, R.C.M., 1947, apply to the sale by the county of property acquired by tax deed?

Your first question concerns situations in which property acquired by the county by tax deed has been offered at least once at public auction and not sold. The applicable statute is Section 84-4193, R.C.M., 1947:

"Unsold Land—How Disposed Of—Interest Rate. In the event any of said lands are not sold at such public sale the county commissioners may at any time either again appraise, advertise, and offer the same at public auction or sell the same at private sale at the best price obtainable at not less than ninety per cent (90%) of the

last appraised value and on such terms as may be agreed upon, provided the rate of interest on deferred payments shall be four per cent (4%) per annum and provided, further, that the terms other than price as to each class of land, grazing, farming, and irrigated, shall be uniform in each county."

This section gives the county commissioners two options—they may again "appraise, advertise, and offer" the land at public auction or sell at a private sale with the minimum selling price being ninety per cent (90%) of the last appraised price. The intent of the act is clear that every reappraisal must be followed by an offering at public auction, and that no private sale may be made at any appraised price, unless the land has at least once been offered at auction at that price.

In selling tax deed lands, it is the duty of the county commissioners to realize the best possible price. (*Berger v. Johnson*, 116 Mont. 270, 151 Pac. (2d) 586). Land may not be sold at private sale if competitive bids may be secured. Since, after reappraisal, there is always the possibility that several prospective buyers may be willing to bid at the new price, the statute is consistent with the commissioners' duty to secure the best possible price.

It is therefore my opinion that a board of county commissioners may not sell property acquired by tax deed after reappraisal without first readvertising the property for sale at public auction.

Your second question concerns whether there is a duty to reappraise property before selling at private sale. As outlined above, there cannot be a private sale unless the property has previously been offered for sale at public auction at that appraised price.

Our statutes do not dictate the times or conditions under which reappraisals shall be made; however, Section 84-4190, R.C.M., 1947, demands that ". . . no sale shall be made for a price less than the fair market value thereof, as determined and fixed by the board of county commissioners prior to making the order of sale . . ." This section

makes it the duty of the board of county commissioners to set the appraised value at the fair market value, and any sale made at less than the fair market value is in violation of the duty of the commissioners to secure for the county the best possible price.

It is therefore my opinion that the board of county commissioners need not reappraise property before selling it at private sale, but must offer any tract of tax deed land at public sale after any reappraisal before offering it for private sale at that price.

It is further my opinion that the board of county commissioners is under a duty to reappraise tax deed property whenever the appraised value does not reflect the fair market value.

Your third question concerns sales of tax deed property under Section 16-1009, R.C.M., 1947.

Chapter 171, Laws of 1941, repealed Chapter 181, Laws of 1939, which specifically provided that property of a value of less than \$100.00 was not subject to the usual provisions for sale of tax deed property, but must be sold under the provisions of Section 16-1009, supra. Chapter 181, by its own terms, applied only to tax deed property of a value of more than \$100.00. Chapter 171, supra, which repealed Chapter 181, provided for public sale: "Whenever the county has acquired any land by tax deed, . . ." (Section 1, Chapter 171.) Section 8 of Chapter 171, provided that Section 16-1009 should apply only to: ". . . property belonging to the county of the value of less than fifty dollars (\$50.00) and property of the county acquired by means other than by tax deed . . ."

There is a seeming inconsistency between these two sections of the same act. Under the rules of statutory construction, they must be read together and harmonized, if possible. (*State v. Board of Commissioners of Cascade County*, 89 Mont. 37, 296 Pac. 1.) Although Section 84-4197, (Section 8, Chapter 171) permits sale of land of less than \$50.00 in value under Section 16-1009, supra, Section 84-4190, (Section 1,

Chapter 171, as amended) requires that any land acquired by tax deed be offered at public sale.

It was evidently the intention of the legislature in enacting these two provisions in the same act to require that all land be offered at public sale at least once. Land which is not sold at such public sale may then be sold under the provisions of Section 16-1009, supra, if its value is less than \$50.00.

It is therefore my opinion that the provisions of Section 16-1009, R.C.M., 1947, apply only to those tax deed properties which have a value of less than fifty dollars (\$50.00) and have been offered at least once at public auction under the provisions of Section 84-4190, R.C.M., 1947.

Very truly yours,
ARNOLD H. OLSEN,
Attorney General.