

**OPINION
46-38**

February 11, 1946 (OPINION)

COUNTY-OWNED LANDS

RE: Sale-Rights of Lessees

This will acknowledge the receipt of your letter dated February 8, 1946, in which you request our answers to the following questions:

"1. What duties and or authority do County Commissioners have in connection with the sale of county owned land acquired by tax deed?

"2. In the event a certain person has made application in the county auditor's office for and paid the appraised value in full or one fourth of such value on a certain parcel of land owned by the county thru tax deed, and another person has in the past year or more been leasing this same land from the county, do the County Commissioners have authority to notify the said renter and give him the opportunity to bid over the person who first made application to purchase this land?

"3. In connection with the two foregoing questions, what is your interpretation of chapter 57 2827 Revised Code of 1943?"

I shall endeavor to answer the above questions in the order stated.

1. First: It is the duty of the board, under the provisions of section 57-2810 of the Revised Code to appraise all real estate acquired by the county through tax sale proceedings and fix a minimum price therefor which "shall be sufficient to cover all general taxes, special assessments, hail indemnity taxes, penalties, interest, and costs, which were levied or extended against the property at the time of the service of the notice of expiration of period of redemption. If the fair market value of such property is less than such total amount, the board shall fix a fair and just minimum sale price for such property."

Second: Under the provisions of section 57-2811, the board must set a date for hearing objections to the minimum price so determined.

Third: Under the provisions of section 57-2821, the board of county commissioners shall, after any real estate has been sold for cash or upon a contract for deed fully performed by resolution, cancel all general and hail indemnity taxes, and special assessments remaining of record against the lands sold at the date of sale.

Fourth: Section 27-2822 provides for the sale of city lots owned by the county for more than ten years.

Fifth: Under section 57-2823, the board of county commissioners may lease real property acquired by tax deed.

Sixth: Under section 57-2827, the county commissioners may exercise

their discretion as to the lease or sale of tax deed lands.

In other words, the statutes provide that county lands acquired through tax deed are to be sold or leased in conformity with the determination of the board of county commissioners. In carrying out the determination of the board, the county auditor, in effect, acts as the executive secretary thereof. And the safest course for a county auditor to follow when his authority is not clearly prescribed by statute is to first obtain the necessary motion or resolution of his board of county commissioners-especially with reference to the sale of real estate where proceedings affect the validity of the title of the purchaser.

2. It is my opinion that ordinarily the board of county commissioners should not notify a lessee when an application is made for the purchase of county owned land and the appraised price is offered and deposited in full. Ordinarily, a renter has no greater right in this regard than any other resident of the county. But there may be cases where the circumstances may be such that in fairness and equity the renter should be given an opportunity to bid. He may have improved the land and thus made it more salable. In such cases, it would be unfair to sell without letting him know that an offer to purchase has been made. It is impossible to state any definite rule in this regard. In such cases the board should be governed by equitable principles as well as statutory law.

3. It appears to me, Mr. Mortenson, that the provisions of section 57-2827 of the Revised Code are self-explanatory. This section has vested in the board of county commissioners a wide discretion as to whether or not county owned land should be sold or leased. In view of the favorable weather conditions which have prevailed during the past five or six years, one is apt to forget what has happened in the past. I know that everyone recognizes the need of proper land use. During the past five years bumper crops have been produced on so-called "marginal land," but that may not be the case in the future. Therefore, the county commissioners have the right to take into consideration what has happened in Williams County, and in western North Dakota, during the past forty or fifty years and in the light of that experience act accordingly.

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Attorney General