

No. 1

COUNTY CLERK & RECORDER—NOTICE OF APPLICATION FOR TAX DEED—NOTICE TO OWNER IF KNOWN

Held: County Clerk and Recorder, in giving notice of application for tax deed, must give notice to owner of property if known to him independent of his records.

January 10, 1941.

Mr. Wilbur P. Werner
County Attorney
Glacier County
Cut Bank, Montana

Dear Mr. Werner:

Your communication of January 8, 1941, has been received, in which you ask my opinion as to whether or not the County Clerk, in giving notice of application for tax deed, may rely solely upon the mortgage records in the office of the County Clerk and Recorder for the names and addresses of all owners, mortgagees or assignees.

Section 2209, Revised Codes of Montana, 1935, is in part as follows:

"2209. **Notice of application for tax deed.** The purchaser of property sold for delinquent taxes or his assignee **must**, at least sixty (60) days, previous to the expiration of the time for redemption, or at least sixty (60) days before he applies for a deed, serve upon the owner of the property **purchased, if known**, and upon the person occupying the property, if the said property is occupied, and, if the records in the office of the county clerk and recorder show an unreleased mortgage or mortgages upon the property purchased, upon the mortgagee or mortgagees named in said mortgage or mortgages, or if assigned, upon the assignee or assignees of said mortgage or mortgages, a written notice, stating that said property, or a portion thereof, has been sold for delinquent taxes, giving the date of sale, the amount of property sold, the amount for which it was sold, the amount due, and the time when the right of redemption will expire, or when the purchaser will apply for a tax deed, and the owner of the property, or the mortgagee, or the assignee of said mortgagee has the right of redemption indefinitely until such notice has been given and the deed applied for. . . . **Notice of any owner, mortgagee or assignee of mortgage shall be given by registered letter addressed to such mortgagee or assignee . . . as disclosed by the mortgage records in the office of the county clerk and recorder.** In case of unoccupied property, or a mining claim, **such notice must be by registered mail deposited in the post office, addressed to any known owner** residing in or outside of said county with the postage thereon prepaid, at least sixty (60) days before the expiration of the time for redemption, or at least sixty (60) days before the purchaser applies for such tax deed, in addition to notice to the mortgagee or assignee of mortgagee in the manner, and as hereby is provided; provided, that in all cases where the post office address of the owner, mortgagee, or assignee is unknown, the applicant shall publish once a week for two (2) successive weeks in a newspaper published in the county where the property is situated, a notice substantially in the following form: . . ." (Emphasis mine.)

You will notice I have emphasized the pertinent parts of said section as applying to your inquiry. From the foregoing section, you will note that "the purchaser of property sold for delinquent taxes . . . must . . . serve upon the owner of the property purchased, **if known**," . . . and further on in said section, it is required "in case of **unoccupied property**, or

a mining claim, such notice must be by registered mail deposited in the post office, addressed to any **known owner** residing in or outside of said county . . .”

“Taxing statutes are to be strictly construed.”

Shubat v. Glacier County, 93 Mont. 160, 18 Pac. (2nd) 614.

“The purpose of the notice required by said Statute is to advise the owner thereof of the amount he must pay in case he desires to redeem.”

Hinz v. Musselshell County, 82 Mont. 502, 267 Pac. 1113.

It is therefore my opinion that if the Clerk and Recorder has knowledge of the owner or owners of said lands, independent of his records, then in such cases the owners are known to the County, which is, in such cases, the purchaser; and notice should be given to such known owners as provided by law.

Sincerely yours,

JOHN W. BONNER
Attorney General