Opinion No. 546

Deeds—Recording—Description of Land Conveyed, Sufficiency of—County Clerk and Recorder.

HELD: A deed purporting to transfer all property belonging to the grantor located within the State of Montana is entitled to be recorded.

It is the duty of the clerk and recorder to record the deed and to make such other entries on his records as are necessary to give notice of the transfer of title to all lands owned within the county by the grantor.

June 4, 1934

You request an opinion from this office on the following questions:

"A deed to real estate was filed in the Pondera County Clerk and Recorder's office in which the land was described as all property belonging to the grantor located within the State of Montana.

"Under Deeds, in 18 Corpus Juris, pages 181 and 182, this description is held to be a valid description of real estate. However, the Recorder wishes to ascertain if it is mandatory upon him as Recorder to search the ownership books for the land standing in the name of the grantor and enter the transfer of title for each description therein, and also if it is necessary for him to determine the ownership which this kind of a deed apparently makes necessary."

"The purpose of the Recording Act is to protect persons who claim rights under a recorded instrument." (Bozdech v. Montana Ranches Co., 67 Mont. 366.) If the deed referred to is entitled to be recorded, the records should be so made that they will show how the title to any land in the county owned by the grantor is affected by the conveyance.

In Shaw v. McNamara & Marlow, Inc., 85 Mont. 389, the court said: "Where a simple name serves to identify property conveyed, the description is sufficient (Collins v. McKay, 36 Mont. 123, 122 Am. St. Rep. 334, 92

Pac. 295), or where reference is made to something which, on being consulted, indicates the property conveyed (Ryan v. Davis, 5 Mont. 505, 6 Pac. 339). Under either of· these rules the description as the 'Burke homestead at Big Sandy' is sufficient." The court also cited Section 6860 R. C. M. 1921 as supporting the ruling.

"A deed purporting to convey all lands, wherever situated, belonging to the grantor, sufficiently describes lands shown to have belonged to him at the time of the execution of the deed." (Pettigrew v. Dobbelaar, 63 Cal. 396.) "A description in a deed conveying 'all the real estate, water rights, and property of every description, real and personal, in the State of Nevada, or either of them,' is sufficient to convey title." (Brown v. Warren, 16 Nev. 228.)

Such deeds as the one you describe are entitled to be recorded; the books are full of cases where deeds have been held to convey good title where the land conveyed could be ascertained by extrinsic evidence with the description in the deed as a guide. When an instrument is presented to the clerk and recorder to be recorded and is entitled to be recorded, it is his duty to record it, and in order that the records of the clerk and recorder shall furnish all necessary data to inform interested parties what transfers or transactions are of record affecting title to particular lands, we think it is the duty of that official to record the deed in question and make such other entries on his records as are necessary to give notice of the transfer of title to all lands owned in Pondera County by the grantor. Of course, it is not the duty of the clerk and recorder to take notice of any lands owned in any other county by the grantor. It is not the duty of the clerk and recorder to determine the **ownership of** the grantee to lands in Pondera County. It is the duty of the clerk and recorder to record any instrument that is entitled to be recorded. If the instrmuent recorded affects lands the grantor does not own, it is for interested parties to test that matter at their option.

In recording instruments a substantial compliance with statutory requirements is sufficient. (53 C. J. 611.) We think that when the clerk and recorder enters in his index record the memoranda called for and records the deed as submitted, that is sufficient.