

Opinion No. 327**Taxation—Delinquent Taxes—Certificate of Sale—Assessment Book—Real Property—Description.**

HELD: To set forth real property in the assessment book or in a certificate of sale for delinquent taxes as being in a tract which is described by metes and bounds, and comprising a certain number of acres, without more, is not a sufficient compliance with the law.

September 2, 1933.

In your request for our opinion, you gave it as your opinion that to set forth real property in the assessment book or in a certificate of sale for delinquent taxes as being in a tract which is described by metes and bounds, and comprising a certain number of acres, without more, is not a sufficient compliance with the law, and ask us to confirm, if we may, the judgment thus expressed by you.

Section 2048, Revised Codes 1921, provides as follows:

"The assessor must prepare an assessment book with appropriate headings, alphabetically arranged, unless otherwise directed by the state board of equalization, in which must be listed all property within the county, and in which must be specified in separate columns, under the appropriate head:

"1. * * *

"2. Land, by township, range, section, or fractional section; and when such land is not a United States land division or subdivision, by metes and bounds, or other description sufficient to identify it, giving an estimate of the number of acres, not exceeding in each and every tract six hundred and forty acres, locality, and the improvements thereon.

"3. City and town lots, naming the city or town, and the number of the lot and block, according to the system of numbering in such city or town, and improvements thereon."

The statute is mandatory and substantial compliance with its provisions is essential. (*Hauswirth v. Mueller*, 25 Mont. 156; *State ex rel. Hay v. Alderson*, 49 Mont. 387; *Tax Commission Case*, 68 Mont. 450.) The description in the assessment roll, in case of delinquency, is the basis of and is necessarily followed in the certificate of sale and tax deed. Its purpose is threefold: First, to advise the owner of the claim that is made on him or his property; second, to appraise the public, in the event the tax is not paid, of the particular property on which it is a lien, and which will be sold; and, third, to enable the purchaser to obtain a sufficient conveyance. If these objects are to be attained, the description must be not only such as to inform the owner that the tax on his land is unpaid, but also that the purchaser may know or learn the precise tract intended, and be able to estimate its actual value. The person who will pay the taxes delinquent for the least quantity of the land becomes the purchaser. (*Armour v. Officer*, 88 N. W. 1058; *Cordano v. Kelsey*, 151 Pac. 391; 61 C. J. 710; 3 *Cooley on Taxation*, sec. 1175.)

"A description which would suffice in an agreement to convey or in a deed may be bad in an assessment. In the first case the court might inquire as to the intention of the parties, but in the other the owner has no part in the proceeding, which is hostile, and to every step in which he is objecting. The assessment is made with a view to a possible sale, and the property should therefore be so described as to enable the owner to know what land is charged with the tax, and also to enable a possible pur-

chaser to know what land is offered for sale. The bidder who will pay the tax for the smallest portion of the land will have his offer accepted. To decide this matter, there should be no uncertainty as to what land he is dealing with. Hence the description should be sufficient in itself to identify the land, * * *." *Miller v. Williams*, 67 Pac. 788.

The description in question, by reason of its uncertainty, is not sufficient to identify the property intended to be assessed, and hence does not comply with the provisions of Section 2048, *supra*. (*City of Lewistown v. Warr*, 52 Mont. 353; *Horsky v. McKennan*, 53 Mont. 50; *Armour v. Officer*, *supra*; *Palomares Land Co. v. Los Angeles County*, 80 Pac. 931; *Dane v. Glennon*, 72 Ala. 160; *Keyes v. State*, 117 Atl. 166; *Millikan v. City of LaFayette*, 20 N. E. 847; *Wilson v. Jarron*, 131 Pac. 12; *Ferguson v. Gusdorf*, 290 Pac. 214; 61 C. J. 718.)