

Opinion No. 292.

Taxation—Tax Deeds, Notice of Application For.

HELD: The personal service of notice of application for tax deed as

required by Section 2209, as amended, need be made only upon persons in actual possession or occupancy and not upon persons in constructive possession or occupancy.

person could be personally served upon the property.

May 22, 1936.

Mr. Al Hansen
County Attorney
Baker, Montana

You have requested my opinion as to the meaning of the language, "serve * * * upon the person occupying the property, if the property is occupied," in Section 2209, R. C. M. 1921, as finally amended by Chapter 190, Laws of 1933, which reads: "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" etc.

It is my opinion that the phrase "the person occupying the property" means such person who has his actual residence on the property, that is, who is in actual possession as distinguished from constructive residence or possession. The term carries the idea of abiding on the property—actually living thereon. It is the place of bed and board. This, we think, is what the legislature intended, for the notice must be served personally upon such occupant. Such notice, if it will be observed, may be given by registered mail, addressed to the post office address of the owner, mortgagee or assignee. No such service by mail upon the occupant is permitted. The legislature, therefore, by the use of the term "the person occupying the property" must have had in mind an actual occupant and that notice to such