

Opinion No. 264.**Counties—Clerk and Recorder—
Abstracters—Indices—
Public Records**

HELD: 1. Tract indices in the office of the clerk and recorder are public records and must be made available during office hours, for inspection of public.

2. Certified public abstracters have the right to copy tract records in office of Clerk and Recorder without charge.

October 11, 1940.

Mr. Edward T. Dussault
County Attorney
Missoula, Montana

Dear Mr. Dussault:

The question submitted to this office, in short, is, are the tract indices now in the office of the county clerk and recorder public property?

The facts submitted and upon which this opinion is necessarily based are the following: During the period from 1928 to 1931, inclusive, your county contracted and received the services of certain parties in preparing tract indices for the use of the county in the preparation of abstracts.

Among the powers delegated to counties, we have the power (subsection 3 of Section 4444, R. C. M., 1935) that the counties may make such contracts as may be necessary to the exercise of their powers.

The powers of the county are exercised by the county commissioners (State ex rel. Furnish et al. v. Mullendore, 53 Mont. 109, 117).

You admit that the purpose of making these tract indices was in the aid of abstracters in making abstracts to real property. Paragraph 4 of Section 4139.11, as far as pertinent herein, reads as follows:

“The certificate of authority * * * shall authorize the person, firm or corporation, named in it, to engage

in and carry on the business of an abstractor * * * and for that purpose to have access to the public records in any office * * * during office hours, * * * .”

Section 4810 reads:

“All books or records, maps, charts, surveys and other papers on file in his office, must, during office hours, be open for the inspection of any person who may desire to inspect them, and may be inspected without charge; and he must arrange the books of record and indices in his office in such suitable places as to facilitate their inspection.”

The above section refers to the duties of the clerk and recorder of the respective counties, while Section 4931.11, supra, has reference to abstracters and for which service the abstractor must have authority and pays for such authority the sum of \$5.00 per year. Section 4465.19 gives to the county commissioners power to contract for books and stationery for county offices.

Section 455 reads:

“The public records and other matters in the office of any officer are at all times, during office hours, open to the inspection of any person. In cases of attachment, the clerk of the court with whom the complaint is filed must not make public the fact of the filing of the complaint, or the issuing of such attachments, until after the filing of return of service of attachment.”

We mention the above section to show that there are some exceptions as to public records but the tract indices are not within the exception.

Section 10540 defines public records as being written acts or records of the acts of the sovereign authority, of official bodies and tribunals, and of public officers, legislative, judicial, and executive, whether of this state, of the United States, of a sister state, or of a foreign country, and Section 10542, R. C. M., 1935, provides that every citizen has a right to inspect and take a copy of any public writings of this state, except as otherwise expressly provided by statute, and there is no express provision excepting tract indices in the county clerk and recorder's office.

It is my opinion that the tract indices referred to are public records and that the abstracters, under the sections aforesaid, have a right to inspect and to copy the same.

In the event that these tract indices should not be construed as public records we still have another section dealing with such matters which extends beyond the matter of public records and eliminates the necessity of a precise definition of what may constitute public records (Section 455, R. C. M., 1935), which, under the rule stated in *State v. McGrath*, would bring the tract indices within the rights of the public to inspect and within the rights of the abstracters to take copies (*State ex rel. Holloran v. McGrath*, 104 Mont. 490, 498, 67 Pac. (2) 838).