

"We would appreciate your opinion as to whether or not the County of Missoula is the owner of this property as a result of the enclosed deed."

The deed was executed on the 3rd day of April, 1931, by one Moses C. Goff and his wife as grantors and naming "The Old Age Pension Commission of Missoula County, State of Montana, a municipal corporation."

Following the description of the property appears this paragraph:

"The consideration for the hereinbefore transfer of property is that on this date, the grantor herein was allowed an Old Age Pension by the Old Age Pension Commission i.e. the Board of County Commissioners of Missoula County, and being desirous of transferring to said Board of County Commissioners, all of my interest in and to such property as I may now possess for the purpose of reimbursing said Commission for the amount of pension paid to me from time to time; this grant, therefore, is made absolute and the title to said property rests exclusively in said Commission; subject to the provisions of Chapter 72, Section 6 thereof, Session Laws of the Eighteenth Leg. Assembly of the State of Montana for 1923."

At the time of the execution of this deed Chapter 72 of the Laws of 1923 was then in force and effect. By Section 1 of this Act the County Old Age Pension Board was created and thereby designated "Old Age Pension Commission." The section provided that the Board of County Commissioners of the respective counties were designated as the Old Age Pension Commission of such counties.

Subsection (c) of Section 6, after providing for a claim against the deceased pensioner, contained the following provision:

" . . . provided that the Old Age Pension Commission may demand the assignment or transfer of such property upon the first grant of such pension. The Old Age Pension Commission shall establish such rules and regulations regarding the care, transfer, management, and

Opinion No. 74

County—County Commissioners— Deed—Old Age Pension Commission.

Held: That by the conveyance in question it was intended to convey to the county and that it can be established by extrinsic evidence that such was the fact, and therefore the deed in question is valid. It may be that, in order to establish title so that it might be considered to be marketable, an action in the nature of a quiet title action should be brought, but the title in the county is sufficiently good as an equitable title.

October 31, 1947

Mr. Robert F. Swanberg
County Attorney
Missoula County
Missoula, Montana

Dear Mr. Swanberg:

You have submitted the following for my opinion:

"I am enclosing for your information a copy of a Quit Claim Deed executed on April 3rd, 1931 in which 'The Old Age Pension Commission of Missoula County, State of Montana, a municipal corporation' is the grantee. You will note that further along in the deed it is stated 'the title to said property rests exclusively in said Commission'. The County Commissioners have asked my opinion as to whether or not the county is the holder of the title to the property described in the deed.

sale of such property as it deems advisable, and also provide for the return of the balance of the claimant's property into its hands whenever the pension is withdrawn or the claimant ceases to request it."

It will be noted that provision was thereby made for a transfer of the property from the pensioner as a condition precedent for allowing or awarding the pension.

The Act was silent as to the name of the grantee in the deed or transfer of the property of the pensioner.

Section 20 of the same Act provides that the funds for the payment of old age pensions were to be furnished by the respective counties.

Subsequently this Act was superseded by Chapter 170 of the Laws of 1935, which was subsequent to the deed in question, but it is interesting to note in this subsequent Act that by Section 22 the County Old Age Pension Commission might require that the property of the person applying be transferred to said County Old Age Pension Commission.

It is clear from the foregoing that under the Act of 1923 transfers of this character were contemplated and authorized to indemnify or reimburse the county for the funds expended. No such provisions are found in our present Public Welfare Act, Chapter 82 of the Laws of 1937, which repealed the prior Acts above mentioned. As above stated, the Act of 1923 did not provide to whom the property should be conveyed. The Act, however, did create the commission and designate its name.

Our Supreme Court has held that there must be a grantee in order for a deed to be valid, but it is sufficient if the grantee can be identified by extrinsic evidence. In the case of *Hodgkiss v. Northland Petroleum Consolidated*, 104 Mont. 328, it said:

"It is first contended that the mineral deed was void in that the grantee was a fictitious person and therefore incapable of taking title to real estate. The only grantee named was the 'Northland Petroleum Consolidated.' Plaintiff, as an

exhibit to his reply, set forth an agreement or declaration of trust between certain parties, wherein they adopted or designated the name of the grantee in the mineral deed as the name of this trust created by the agreement and declaration. Trustees were appointed under the trust agreement, but their names do not appear in this conveyance.

"The rule with reference to contracts so far as individuals are concerned, entering into agreements under an assumed name, is very well stated in 19 R.C.L. 1333, as follows: 'Again, a contract or obligation may be entered into by a person by any name he may choose to assume. All that the law looks to is the identity of the individual, and, when that is ascertained and clearly established, the act will be binding on him and on others.' This rule appears to be universal and is illustrated by the note setting forth many cases in L.R.A. 1915D (n.s.) 983. We concede the rule that a conveyance to a fictitious person is void for want of proper parties. Where, however, a contract is made with an identical individual under an assumed name, all are bound by the contract. This distinction was recognized in the case of *Scanlan v. Grimmer*, 71 Minn. 351, 74 N.W. 146, 70 Am. St. Rep. 326, and *Wilson v. White*, 84 Cal. 239, 24 Pac. 114, wherein many authorities holding in accord with this view are reviewed at length. There appears to be no dissent among the adjudicated cases from this rule. It would appear to follow logically that if an individual may contract under an assumed name, no sound reason exists why a group should not likewise so enter into contracts. In *Sears on Trust Estates & Business Companies*, second edition, 374, it is said: 'Strictly speaking, it may be said that a trust cannot adopt a name. It has no power to do anything implying either volition or dissent. It is merely property with a characteristic attached to or inhering in it. But trustees, who represent it, are individuals *sui juris*, and they may adopt a name or names for transacting business,

executing contracts, or suing and being sued.' (See, also, Pease v. Pease, 35 Conn. 131, 148, 95 Am. Dec. 225; Carlisle v. People's Bank, 122 Ala. 446, 26 So. 115.) A deed is sufficient if the grantee can be identified by extrinsic evidence. (York v. Stone, 178 Wash. 280, 34 Pac. (2d) 911). The trustees of the defendant trust were all parties to the trust agreement. They were identified persons. Accordingly, we hold that the mineral deed was not void for want of a proper grantee."

Under the above decision it is my opinion that by the conveyance in question it was intended to convey to Missoula County and that it can be established by extrinsic evidence that such was the fact, and therefore the deed in question is valid. It may be that, in order to establish title so that it might be considered to be marketable, an action in the nature of a quiet title action should be brought, but the title in Missoula County is sufficiently good as an equitable title.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General