

OPINION
65-399

December 10, 1965 (OPINION)

Mr. Lloyd Omdahl

Tax Commissioner

RE: Taxation - Real Property Assessment - Legal Description

This is in reply to your letter of December 8, 1965, in which you state that there is rather wide spread interest on the part of county auditors and apparently also on the part of private lending agencies in the question of whether the laws of this state require the county auditor, when he makes up the real estate assessment list for property tax purposes, to make that list in accordance with the various legal descriptions of ownership of real estate on record in the office of the register of deeds of that county.

You suggest that the question in reality involves two basic questions, the first of which is: "How should tracts or lots be described for assessment purposes?" and the second of which is "On what information should the county auditor base the real estate assessment list that he is required by section 57-02-31, N.D.C.C., to prepare in every odd-numbered year?"

A third question asked by you is the following: "If a lot or tract under a single ownership has been separated for assessment purposes in past years into two or more descriptions in accordance with a separate leasehold or mortgage interest on each such description, should the county auditor eliminate the separate descriptions when he makes up the assessment list for the next odd-numbered year and list the entire lot or tract for assessment as a single unit?"

Each of the two basic questions and the third question asked by you will be considered separately in the following paragraphs.

THE FIRST QUESTION IS: How should tracts or lots be listed and described for assessment and taxation purposes?

Although there is apparently no express requirement in the law compelling the county auditor to compile the real estate assessment list from the recorded descriptions of ownership in the register of deeds office, it is my opinion that all of the various pertinent provisions when considered together clearly show a legislative intention that the county auditor should make this list in accordance with the descriptions of ownership that are on record in the register of deeds office when those descriptions are sufficiently clear and exact enough to identify the particular tracts or lots being assessed.

In other words, a single recorded description of a lot or tract of 160 acres or less should be assessed as a unit to the owner of record and not separated into smaller tracts for assessment of each tract to

the owner in accordance with the various recorded leasehold, mortgage or other interests covering those separate parts of the single recorded ownership description.

The reasons for this conclusion follow:

Subsection 3 of section 57-02-01, N.D.C.C., includes the following definition for purposes of Title 57:

'Tract,' 'lot,' 'piece or parcel of real property,' or 'piece or parcel of land' means any continuous quantity of land in the possession of, owned by or recorded as the property of, the same claimant, person or company."

Section 57-02-38 provides as follows:

57-02-38. UNITS OF REAL PROPERTY FOR ASSESSMENT. In all assessment books and tax lists and in all proceedings for the collection of taxes and proceedings founded thereon, land not situated within the limits of an incorporated city or village shall be described in subdivisions not exceeding quarter sections. Real property in the platted portion of a city or village shall be assessed separately as to each lot, but where a building or structure covers two or more contiguous lots or parts of lots owned by the same person the assessment shall not be entered separately as to each lot or part of lot, but the tract upon which the building is located shall be described and assessed as one parcel. A block which has not been subdivided may be described, assessed, and taxed in a unit of one block. A failure to comply with the provisions of this section shall not impair the validity of taxes." (Underlining added.)

Subsection 1 of section 57-02-34 provides in part that the assessor "by actual examination, shall determine the true and full value of each tract or lot of real property listed for taxation." (Underlining added.)

The statutory provisions just quoted clearly indicate that a tract or lot owned by the same person or persons should be listed and assessed as a single unit according to the description of that tract or lot and should not be separated into separate descriptions, each of which is subject to a separate lease or mortgage or other real property interest.

The conclusion reached in the preceding paragraph is further compelled by the fact that chapter 57-25 provides a special procedure for redemption from tax sale by the owner of a mortgage or lien or other interest in only a part of the lot or tract that was sold at tax sale. In this regard section 57-25-01 provides in part that:

In case a mortgage, lien, or sheriff's certificate, or any other instrument conveying an interest in property, affects only a part of the real estate taxed as a unit, any person interested therein may petition the county auditor that he be permitted to pay taxes and make redemption from tax sale as to that part only of the real estate in which he is interested."

Also see section 57-26-05 to the same effect.

THE SECOND QUESTION IS: On what information should the county auditor base the real estate assessment list that he is required by section 57-02-31, N.D.C.C., to prepare in every odd-numbered year?

Although at one time in the history of the state, the assessor had the responsibility of properly describing and listing real property for assessment purposes, see *Power v. Bowdle*, 1893, 3 N.D. 107, 127, 54 N.W. 540, that responsibility is now placed on the county auditor by section 57-02-31 which provides in part as follows:

57-02-31. AUDITOR TO FURNISH BOOKS TO ASSESSORS AT MEETING. The county auditor annually shall provide the necessary books and blanks at the expense of the county for and to correspond with each assessment district or township. In every odd-numbered year, he shall make out in the real property assessment book a complete list of all lands or lots subject to taxation such lists shall show the name of the owner, if known to him, and if unknown, shall state that fact, the number of acres, and the lots and parts of lots or blocks included in each description."

While the county auditor is not expressly directed to compile the real estate assessment list from the recorded descriptions in the office of register of deeds, the statutes contemplate that the recorded descriptions should at least be his major source of information for making the list. For instance, the procedure set out in section 57-02-25 for assessing severed coal and mineral ownership interests includes the direction that "The register of deeds shall furnish the county auditor with such information as is contained in his office and as will enable the said auditor to prepare the lists described in this section."

Similarly, "tracts," "lot," etc., defined in subsection 3 of section 57-02-01, quoted above, refer to the recorded description, as does section 57-02-39 which provides for platting irregular shapes of real estate "into lots or blocks according to deeds on record."

See 84 C.J.S. page 768, section 402 b to the effect that an assessor in searching for omitted property or in determining who is the owner of particular property is justified in relying on what he finds on the public records. "Assessor" as used there obviously means the person responsible for making the real estate assessment list, such as the county auditor under North Dakota law.

In *Northwestern Improvement Company v. Oliver County*, 1917, 38 N.D. 57 at 64-65, 164 N.W. 315 at 318, last paragraph, and 319, the Court recognized that the county auditor could ascertain from the "records of the register of deeds" the ownership and description of severed mineral interests for purposes of assessing them as omitted property.

It is my opinion, however, that if the county auditor is not able to find from the records of the register of deeds a sufficient description of real estate that will accurately identify the tract or lot to be assessed, he should obtain the necessary description from whatever other source he can. Also, in a case where a tract of land

can be described only by metes and bounds, the county auditor should require the owner to plat or replat the land, as the case may be, in accordance with section 57-02-39, N.D.C.C.

A sufficient description is necessary because an assessment of real estate and tax sale proceedings in order to be valid must be based on "a description sufficiently accurate and definite to enable the owner to identify it therefrom as his property." See Grand Forks County v. Frederick, 1907, 16 N.D. 118, at 123 and also at 124-125, 112 N.W. 839 at 840-841.

THE THIRD QUESTION IS: If a lot or tract under a single ownership has been separated for assessment purposes in past years into two or more descriptions in accordance with a separate leasehold or mortgage interest on each such description, should the county auditor eliminate the separate description when he makes up the assessment list for the next odd-numbered year and list the entire lot or tract for assessment as a single unit?

It is my opinion that the county auditor should eliminate these separate descriptions when he makes up the assessment list for the next odd-numbered year and should list the entire lot or tract for assessment as a single unit, provided however, that if the tract is outside the limits of an incorporated city or village, not more than 160 acres should be assessed under a single description as provided by section 57-02-38, and if it is within the limits of an incorporated city or village it should be listed and assessed separately as to each lot except as otherwise provided by section 57-02-38.

If, after the current assessment listing of such a tract has been corrected to list and assess it under one description, the property taxes thereafter levied against the tract for any year become delinquent and are sold by the county auditor at the annual December tax sale (chapter 57-24, N.D.C.C.), any person who holds an interest in only part of the tract (whether it be a leasehold, mortgage or other interest described in section 57-25-01), may petition the county auditor pursuant to chapter 57-25, N.D.C.C., to pay taxes and make redemption from tax sale as to that part only of the tract in which he has an interest.

ATTORNEY GENERAL

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