

**OPINION
74-323**

April 23, 1974 (OPINION)

Mr. Maurice E. Cook
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Attorneys at Law
105 North Main
Bowman, ND 58623

Dear Mr. Cook:

This is in response to your letter of April 9, 1974, wherein you make inquiry of this office concerning the recordation of deeds containing no description of real property. You submit the following facts and questions in your letter:

"The Register of Deeds of Bowman County has handed me a deed which by its terms purports to convey real property, among other things. The deed was presented to the Bowman County Register of Deeds with the recording fee and a request to record the deed. The Register of Deeds question to me is, is the deed entitled to record without a description of specific real property to be affected by the deed?

"I have found no statute that specifically requires a description of real property as prerequisite to recording. In North Dakota Century Code section 11-18-10(8) there is language that would tend to indicate that perhaps a deed not having a description may be at least entered in 'the reception book'.

'In the eighth column, a brief description of the property, if any, described in the instrument.'

"In addition to the recording laws I have reference to North Dakota Century Code section 11-18-02 that requires a certificate from the County Auditor showing that taxes have been paid on lands to be transferred.

"If a deed is entitled to record that does not contain a description of the real property affected by the deed and if the auditor's transfer can only apply to property described in a deed then it would appear that in order to circumvent the requirement of payment of taxes prior to recordation all one would have to do is cause to be recorded a deed not describing the real property affected by the deed.

"My questions are:

1. Must a deed purporting to convey real property contain a description of the real property to be conveyed to be entitled to record; and
2. Is a County Auditor's certificate indicating payment of taxes required for a deed not containing a description and if it is how is the auditor to determine the property

description?"

You have also enclosed a copy of the deed which is the subject of this inquiry. Examination of the deed indicates that while there is no specific description, the same does purport to convey an interest in real property, as well as personalty, in a blanket form. The description in the said deed provides as follows:

" * * * all of my property, real, personal or mixed wherever situated, including all property given, devised and bequeathed to me for and during my natural life by my late husband, (named individual), and all the proceeds therefrom, all of which I hereby sell and convey, * * * "

We note that the given description does not locate the property in any particular locality or district but is rather an all encompassing type of description. While the question of whether such a description is void for want of definiteness or whether the same does in fact convey some interest as between the parties would appear to be a question which would not be relevant to the issues presented by your inquiry. We would note section 123 of Patton on Titles, as follows:

"SECTION 123. BLANKET DESCRIPTIONS. Conveyances are sometimes found which give no definite description, but which refer to the land conveyed merely as all of the lands of the grantor in a described district, all inherited from a named person, or all to which title was obtained from some other designated source. Though in poor form, conveyances using such descriptions are generally held sufficient to pass title to all land shown by the records to be embraced by them.

As you have noted in your letter of inquiry, there appears to be no statute which specifically requires a description of real property as a prerequisite to recording. You have also noted the provisions of section 11-18-02 of the North Dakota Century Code relating to a certificate from the County Auditor showing that the taxes have been paid on lands to be transferred which we also feel is applicable in the instance of your inquiry. The same provides as follows:

"11-18-02. REGISTER OF DEEDS NOT TO RECORD CERTAIN INSTRUMENTS UNLESS THEY BEAR AUDITOR'S CERTIFICATE OF TRANSFER. Except as otherwise provided in section 11-18-03, the Register of Deeds shall refuse to receive or record any deed or patent unless there is entered thereon a certificate of the County Auditor showing that a transfer of the lands described therein has been entered and that the delinquent taxes and special assessments or installments of special assessments against the land described in such instrument have been paid, or if the land has been sold for taxes, that the delinquent taxes and special assessments or installments of special assessments have been paid by sale of the land, or that the instrument is entitled to record without regard to taxes." (emphasis supplied)

In addition to the foregoing statute which requires that the Register of Deeds must refuse to receive or record any deed or patent without the subject certificate, we would note that the Register of Deeds is

required to prepare and maintain tract indexes as provided by section 11-18-07; grantor-grantee indexes as provided by section 11-18-08; and a reception book as provided by section 11-18-10, which, among other things requires that in the eighth column of such reception book, a brief description of the property, if any, described in the instrument. These requirements clearly indicate that the Register of Deeds must have some source of determination as to the property involved or purported to be involved in the transfer. If the subject deed had in fact referred to other documents or instruments of record whereby some basis of determination could be had, a different result may be reached. In the instance of your inquiry, however, we find no recital in the deed which purports to link the transfer to any matter, document, or instrument of record and it would appear that the Register of Deeds would be required to make a complete search of the record and make legal conclusions therefrom with regard to the existence of any rights in property, actual or contingent, present or future, in order to index the transfer. Accordingly, in order to secure the certificate of the County Auditor showing that the delinquent taxes and special assessments against the subject lands have been paid, it would require a like legal determination and search on his part.

In view of the foregoing, it would appear to us that the subject deed is not entitled to record under the laws of this state and the Register of Deeds may refuse to record same for the reasons set forth herein. Thus, in direct response to your first question, we would conclude that a deed purporting to convey real property must contain a description of the real property to be conveyed in order to be entitled to record. In view of this expressed view to your first question, it appears that your second question does not compel response.

We trust that the foregoing general observations, comments and expressions will adequately set forth the thinking of this office upon the matter and will be of interest and assistance to you.

Sincerely yours,

Allen I. Olson

Attorney General