TAXATION AND REVENUE: In the assessment of lands for general county and state taxes and all subsequent proceedings to foreclose the lien therefor, the description of such lands and lots must be sufficiently definite to lead to identification.

December 21, 1940

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Honorable Syl. T. McIntyre
County Assessor
Marion County
Hannibal, Missouri

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Dear Sir:

We desire to acknowledge your request for an opinion on December 17, 1940, which is as follows:

"The question came up sometime ago in regard to advertising property for sale under the Jones-Munger Law. I of course have many subdivisions in this County the same as in all other counties, and I take the position that after a piece of property is subdivided and dedicated as a certain name that is all that should be necessary. However, I would like an opinion as to how property should be described.

"For instance: We have Peyton SD which is a subdivision of W 16 ft lot 4 and lots 5,6,7,8,9,10,11 & 12 of Tingle SD of Outlot 16. We also have a subdivision known as Peyton & Stephens SD of Outlots 12 & 13 of the City of Hannibal. Raible SD of Outlot 3 of Griffith's Extended Addition. Susan A. Richmond SD of S pt Lot 3 in Richmond's Original SD of E½ of SE ¼ of Sec 30 Twp 57 Range 4 West.

> "Will you please give an opinion as to whether all of the above description should be listed on each and every lot or would it be all right to say 'all lot 1' or two whatever the case may be in Susan A. Richmond SD or whatever Subdivision it might happen to be.
>
> "I have looked for some decisions along this line but up till now have been unable to find any."

Lands in this state are generally described by sections, townships and ranges or subdivisions thereof. When a municipality is carved out of such area it is usually divided into lots, blocks and additions or unplatted described tracts. However, in some sections of the state, in addition to such division, there exists an additional area division called outlot.

In the assessment of lands and lots for taxes the descriptions must be sufficiently definite to lead to identification; otherwise the assessment and all subsequent proceedings are void.

In the case of Sligo Furnace vs. Kieffer, 229 S. W. 188, the court held that, in a tax foreclosure, the prima facie showing of correctly recited description in the judgment and deed was overcome by the order of publication, which did not describe the property with sufficient certainty to give jurisdiction.

In the case of Talley v. Schlatitz, 180 Mo. 231, 79 S. W. 162, the court held that, a sheriff under an execution in a suit for taxes could not make a good deed to the land if it were wrongly described in the notice of sale. In the case of Milner v. Shipley, 94 Mo. 106, 7 S. W. 175 the court held:

> "It is said the court erred in allowing the judgment to be impeached by the files of the court. The judgment recites that the defendants had been 'duly notified by

> publication,' etc. This recital is doubtless conclusive, in a collateral proceeding like this, that the order made by the clerk in vacation had been duly published according to the command of the order. But the petition and order of publication are as much a part of the record proper-the judgment roll-as the judgment itself. If there is any conflict between the recitals in the judgment, as to the terms of the order, and the order itself, the latter must control, for a recital of the order must yield to the order itself. Crow v. Meyersieck, 88 Mo. 411. A judgment which is erroneous, or irregular, or both, cannot be impeached collaterally. Rosenheim v. Hartsock, 90 Mo. 365; Burnett v. McCluey, 92 Mo. 230. But here the court had no jurisdiction to render a judgment against property, different from that described in the petition and order of publication. The judgment is, therefore, void, and open to collateral attacks. Janney v. Spedden, 38 Mo. 397."

In the case of Ware vs. Johnson, 55 Mo. 500, the court held that where a sheriff's deed, in a sale of lands contains a false subscription, a court of equity will not aid the deed and pass the title. That the only redemption in such case is a proceeding to obtain a new deed in the court from whence the process issued.

In the case of Lowe vs. Ekey, 82 Mo. 286, the court held that, a description of the land in a tax deed must conform to the anterior proceedings; "The tax must follow the assessment, judgment and execution. See Bladwell on Tax Title (3d Ed.) side p. 384, top p. 379. The assessment and all the subsequent tax proceedings under which the tax deed purports to be executed contained no adequate description of the lands, and were therefore void. There was no valid judgment rendered against the land for the taxes of 1874."

The rule as to the determination of whether a description of real estate is sufficiently definite or not, is laid down in the case of National Cemetery Ass'n. of Missouri vs. Benson, 129 S. W. (2d) 842, 845 in the following language:

> "The assessments are not void because the description '65 acres unplatted portion of Valhalla Cemetery' in Normandy School District is insufficient. In some assessments the word 'unplanted' was inadvertently substituted for 'unplatted.' We have followed the general rule in this State that a description is sufficiently definite and certain if the description by its own terms will enable one reasonably skilled in such matters to locate the land. Elsberry Drainage District v. Seerley, 329 Mo. 1237, 49 S. W. 2d 162. A valid assessment is essential to a valid tax. In State ex rel. Wyatt v. Wabash Railway Company, 114 Mo. 1, 21 S. W. 26, we quoted from City of Philadelphia v. Miller, 49 Pa. 440: 'Where the assessment wholly fails to lead to identification, so that neither the owner nor the officer can tell that his land is taxed, the duty of payment cannot be performed, and the assessment is void.' Mr. Robert Kinsey, a surveyor, who was called as a witness by plaintiff testified that from the beginning he did all the surveying work for the cemetery. He stated that there was 67,238 acres of unplatted land and upon deducting 2 acres for variations and roadways, there remained 65,238 acres of unplatted land in April, 1925 and the subsequent years for which the assessments were made. We hold that the description was sufficient, * * *"

In the case of State vs. Childress, 134 S. W. (2nd) 136, a suit was brought by the State of Missouri at the relation and to the use of Harry Martin, Collector of Douglas County against R. W. Childress to enjoin him from moving a house from land upon which taxes were due and unpaid.

The land described on the assessor's books and on the collector's books is as a "part of NW¼ NW¼, Sec. 23, Twp. 27, Rg. 17."

The court in discussing the question of description, held as follows:

> "Are the facts sufficient to support the judgment? There was, what we may term, a typographical error in the petition, otherwise the description therein, in effect, conformed to the description in the deed record introduced in evidence. Respondent, it would seem proceeded at the trial on the theory that the state had a lien for taxes on the land, regardless of the description on the assessor's books, or on the collector's books, or in the notice of sale, and that if the land was correctly described in the petition and then it was shown by oral evidence that such land was, in fact, the land owned by defendant, that such was sufficient and would cure any defect in description on the tax books or in the notice of sale.
>
> "The state's lien for taxes 'does not accrue and become a fixed encumbrance until the amount of the tax is determined by an annual assessment of the land and annual levy of the tax.' McAnally v. Little River Drainage District, 325 Mo. 348, 28 S. W. 2d 630, 631, Sec. 9747, R. S. 1929, Mo. St. Ann. Sec. 9747, p. 7868.

> "State ex rel. Flentge v. Burrough, et al., 174 Mo. 700, 74 S. W. 610, was an action 'for back taxes.' The tax bill described the land as 'pt. out lot 54, survey 2199.' It was held that such description would not support a judgment for taxes, and that a correct description in the petition would not validate or cure such description. See also State ex rel. Wyatt v. Wabash R. Co. et al., 114 Mo. 1, 21 S. W. 26; State ex rel. Ward v. Linney, 192 Mo. 49, 90 S. W. 844; State ex rel. Smith v. Williams et al., Mo. Sup., 216 S. W. 535; State ex rel. and to Use of Ross v. Lamb, Mo. Sup., 26 S. W. 2d 83."

A lot or part thereof is the smallest unit of any area within a municipality. To give a description sufficiently definite to identify such lot it is necessary that it be shown to be within a designated block, addition or out lot - where such subdivision exists.

Applying the above rules of law to your problem and example mentioned in your inquiry "Lot 1, Block 1 in Susan A. Richmond subdivision to the City of Hannibal," let us presume that there was a Susan A. Richmond subdivision in out lot 1, and another in out lot 2, or perhaps two such subdivisions in the same out lot. Such description would not meet the requirement of the above rules of law.

CONCLUSION.

Therefore, it is the opinion of this Department that in the assessment of lands and lots for general county and state taxes and all subsequent proceedings necessary in the foreclosure of

the lien therefor, the description of a lot or group of lots must be sufficiently definite and certain that by its own terms it may enable one reasonably skilled in such matters to locate the land or lots.

Respectfully submitted,

S. V. MEDLING
Assistant Attorney General

APPROVED:

COVELL R. HEWITT
(Acting) Attorney General

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