

TAXATION: Senate Bill 94. Published list of delinquent lands to be made according to any legal subdivision as the same may be according to ownership. Cost of publication to be pro rated against all lands in publication.

11-9
October 31, 1934



Ruby W. Thomasson
Collector
Fulton
Missouri

Dear Madam:

We acknowledge receipt of your letter addressed to Attorney General McKittrick, as follows:

"Will you please advise as how to figure the cost on this land that is to be sold for taxes. And how the land should be described. Please give this information as soon as possible."

1. (a). Section 9952b Laws of Missouri 1933, page 430, requiring the county collector to cause a copy of a list of the delinquent lands and lots to be published in some newspaper of general circulation published in the county where such lands are located, provides, in part, that the land in the publication of such delinquent lists,

"* * * shall be described in 40-acre tracts or other legal subdivisions * * *."

Section 751 of the U S C A, title 43, treating of the surveys of public lands by the surveying authorities of the United States, details the manner in which surveys of public lands belonging to the United States must be originally made. The township lines must be run and the corners established in the first instance by the United States Government.

And,

"The corners of the townships must be marked with progressive numbers from the beginning; each distance of a mile between such corners must be also distinctly marked with marks different from those of the corners."

And,

"The township shall be subdivided into sections, containing, as nearly as may be, six hundred and forty acres each, by running through the same, each way, parallel lines at the end of every two miles; and by making a corner on each of such lines, at the end of every mile. The sections shall be numbered respectively, beginning with the number one in the northeast section and proceeding west and east alternately through the township with progressive numbers till the thirty-six be completed."

And,

* * * field books shall be returned to the Field Surveying Service, which shall cause therefrom a description of the whole lands surveyed to be made out and transmitted to the officers who may superintend the sales. "

Section 752 U S C A, title 43, makes provision for the ascertainment of the boundaries and contents of sections, half-sections, and quarter-sections of public lands. It appearing therefrom that the United States Government may or may not survey sections into other legal subdivisions.

(b). Section 11590 Revised Statutes Missouri 1929, authorizes the several county courts in this state to obtain from the Surveyor General of the United States or other proper federal official, a certified copy of field notes of all surveys of lands lying within their counties.

Sections 11593, 11594, 11595 and 11596 provide for the subdividing of government surveyed sections of land into halves, quarters, eighths and sixteenths respectively, and from all of the foregoing it is apparent that half-sections, quarter-sections and quarter-quarter-sections are all legal subdivisions of land. In the absence of a contrary intention appearing it is generally held that when the words 'legal subdivision' are used it means and refers to a quarter-quarter-section or forty acres of land. This is held in:

Robinson v. Forrest 29 Cal. 317, 324.
Hopper v. Nation 78 Kan. 198.
Greenblum v. Gregory 161 Wash. 42.

However, the section above quoted makes reference to forty acre tracts 'or other legal subdivision,' so that the Legislature had in mind the describing of lands by legal subdivisions other than and in addition to forty acre tracts or quarter-quarter-sections.

We are of the opinion that the list of delinquent lands when published may describe such lands by any or all of the legal subdivisions above referred to, or if a legal subdivision be fractional, then according to the description of such fractional subdivision, as the same may appear from the delinquent list and according to separate ownerships.

2.

As to the distribution of the cost in publishing the list and making the sales referred to in said Section 9952b, it is further provided:

"The expense of such printing shall be paid by the purchaser or purchasers of the lands and/or lots sold, * * * * which cost of printing at the rate specified shall be taxed as part of the cost of the sale of any land or lot contained in such list and disposed of at such sale, and the total cost of printing such notice shall be pro rated against all such lands or lots so sold or redeemed prior to any such sale."

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We think it was the intention of the Legislature that the cost of the publication should be spread out or pro rated among the respective forty acre tracts, or other legal subdivisions, according to the space occupied by each in making the publication. After the publication is made if the owner of lands contained in same paid the delinquent taxes he would also be required to pay his pro rata share of the publication; if the owner of lands contained in the publication redeemed the same after a sale was made and before finally completed or when the same was not sold because of insufficient bids, and if such landowner redeemed such land prior to the final sale of same he also would be required to pay his pro rata share of the newspaper publication, and if lands were finally sold for such delinquent taxes the pro rata share of such land and the cost of such publication could be taxed and collected as costs of making such sale.

Yours very truly,

GILBERT LAMB
Assistant Attorney General.

APPROVED:

ROY McKITTRICK
Attorney General.

GL:LC