

**Note from the Attorney General's Office:**

1986 Op. Att'y Gen. No. 86-028 was overruled in part by  
1994 Op. Att'y Gen. No. 94-066.

**OPINION NO. 86-028****Syllabus:**

1. A county auditor may require that all deeds and other instruments of conveyance be submitted to the county engineer for a determination as to whether the descriptions contained in said instruments are legally sufficient prior to submission to the county auditor for transfer of the real property upon the tax list pursuant to R.C. 319.20. (1936 Op. Att'y Gen. No. 6120, vol. III, p. 1460, overruled.)

2. A county auditor has a mandatory duty to transfer real property on the tax list pursuant to R.C. 319.20 if the instrument of conveyance contains a legally sufficient description, even though the grantor's name shown on the instrument of conveyance does not correspond to the name in which the property stands on the tax list.
3. A county auditor has a mandatory duty pursuant to R.C. 319.20 to transfer real property on the tax list when the instrument of conveyance contains a legally sufficient description, and has no authority to limit the number of exceptions an instrument of conveyance may contain.

**To: J. David Webb, Paulding County Prosecuting Attorney, Paulding, Ohio**  
**By: Anthony J. Celebrezze, Jr., Attorney General, May 21, 1986**

I have before me your request for my opinion on several questions concerning the authority of a county auditor to adopt various policies in regard to the transfer of title to real property. I have phrased your questions as follows:

1. May the county auditor require that all deeds and other instruments of conveyance be submitted to the county engineer's office for inspection and determination as to the adequacy of the legal description contained therein, prior to submission of the instruments to the county auditor's office for transfer upon the tax list?
2. May the county auditor require that a person submitting a deed or other instrument of conveyance for transfer upon the tax list provide adequate documentation of the grantor's right to make the conveyance when the grantor's name does not correspond with the name in which the property stands on the current tax list?
3. May the county auditor limit the number of exceptions which may appear in the legal description of real property in a deed or other instrument of conveyance?

Before turning to your specific questions, I must examine the duties of a county auditor regarding the transfer of title to real property. The county auditor is a creature of statute, R.C. 319.01, and, therefore, has "only such powers as are expressly delegated to [him] by statute and such as are necessarily implied from those so delegated" (citations omitted). Schultz v. Erie County Metropolitan Park District Board, 55 Ohio Op. 2d 179, 180, 269 N.E.2d 72, 73 (C.P. Erie County 1971). Pursuant to R.C. 319.28, the county auditor has the duty to prepare annually a general tax list of real property in the county. The tax list must include, inter alia, the persons, firms, or corporations in whose names real property in the county has been listed, and opposite each name, a description of each tract, lot, or parcel of real estate, and the value of such property. The tax list must be prepared in duplicate, one copy to be delivered to the county treasurer and one copy to be retained by the county auditor. Id. See R.C. 5713.01, 5713.03 and 5715.01 (valuation and assessment of real property by the county auditor for purposes of taxation).

The duties of the county auditor with respect to the transfer of ownership of real property on the tax list are contained in R.C. 319.20, which states in part, that:

After complying with section 319.202 of the Revised Code and on application and presentation of title, with the affidavits required by law, or the proper order of a court, bearing the last known address of the grantee, or of any one of the grantees named in the title, and a reference to the volume and page of the recording of the next preceding recorded instrument by or through which the grantor claims title, the county auditor shall transfer any land or town lot or part thereof, minerals therein, or mineral rights thereto, charged with taxes on the tax list, from the name in which it stands into the name of the owner, when rendered necessary by a conveyance, partition, devise, descent, or otherwise.

See R.C. 319.202; 1983 Op. Att'y Gen. No. 83-027; 1969 Op. Att'y Gen. No. 139 at 2-298 (R.C. 319.202 "deals only with conditions precedent to filing, such as declarations of value, fees and exceptions therefrom").

I turn now to your first question which asks whether a county auditor may require that all deeds and instruments of conveyance be submitted to the county engineer for inspection and determination as to the adequacy of the legal description of the real property contained therein, prior to submission of the instrument to the county auditor for transfer of the real property upon the tax duplicate. In State ex rel. Ballard v. McKelvey, 89 Ohio L. Abs. 407, 184 N.E.2d 124 (C.P. Monroe County 1961), aff'd, 89 Ohio L. Abs. 415, 186 N.E.2d 144 (App. Monroe County 1961), the court addressed this precise question, stating that a deed's description "must be such that a competent engineer can locate the property [to be] conveyed." 89 Ohio L. Abs. at 410, 184 N.E.2d at 126. The court further explained the necessity for an instrument of conveyance to contain a legally sufficient description of property in order that the auditor may properly prepare the tax duplicate and determine the tax value of the property pursuant to R.C. 319.20 and R.C. 319.28. See 1980 Op. Att'y Gen. No. 80-029. The court went on to hold that there is "no question but that a County Auditor may require the approval of the County Engineer or his assistant before a deed can be transferred and recorded. Such rule may be necessary and apparently is necessary to enable the County Auditor to make up the required tax maps."<sup>1</sup> 89 Ohio L. Abs. at 411-12, 184 N.E.2d at 126.

<sup>1</sup> Pursuant to R.C. 5713.09:

The board of county commissioners may designate the county engineer to provide for making, correcting, and keeping up to date a complete set of tax maps of the county, and shall employ the necessary number of assistants....[S]uch maps shall furnish the county auditor, for entering on the tax duplicate, a correct and proper description of each lot or parcel of land offered for transfer. (Emphasis added.)

See R.C. 325.14 ("[t]he engineer shall be the county tax

See Briggs v. Jeffers, 36 Ohio Op. 2d 36, 39, 215 N.E.2d 622, 626 (C.P. Monroe County 1965) (concluding that "[t]he auditor is required by statute to keep accurate tax maps, and may call upon the county engineer to assist him. Reasonable rules may be promulgated requiring deed descriptions to be in such form and detail as to enable the auditor to perform his duties"). Therefore, in order to carry out his responsibilities to enter on the tax duplicate an accurate description of the real property offered for transfer and to determine the tax value of such property, the county auditor has the implied power to require that all deeds and other instruments of conveyance be submitted to the county engineer for a determination as to whether the descriptions contained in said instruments are legally sufficient, prior to submission to the county auditor for transfer on the tax duplicate.<sup>2</sup>

You also ask whether a county auditor may require, prior to transferring property on the tax duplicate, adequate documentation of the grantor's right to make the conveyance from the person submitting the instrument of conveyance, when the grantor's name does not correspond with the name in which the property stands on the current tax list.

Opinions of my predecessors have interpreted R.C. 319.20 and concluded that after the grantee has complied with R.C. 319.202 and has presented to the county auditor a deed that contains a legally sufficient description of the parcel to be transferred, the county auditor has a mandatory duty to transfer title to the parcel to the grantee. See Op. No. 80-029 (syllabus, paragraph one) (concluding that, "[a] county auditor may not refuse to process a deed because he believes that the deed is legally defective if the deed contains a description that enables the auditor to identify the property to be transferred); Op. No. 69-139 (syllabus, paragraph one) ("[a] county auditor must accept for transfer on the tax duplicate any conveyance of real estate which enables him to identify the property to be transferred").

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map draftsman"); 1983 Op. Att'y Gen. No. 83-027 (it is mandatory that the county engineer assume the responsibility for tax mapping).

<sup>2</sup> 1936 Op. Att'y Gen. No. 6120, vol. III, p. 1460 concluded that a county auditor may not refuse to transfer a deed upon the tax list, "for the reason that the county surveyor [now the county engineer] has not checked and approved the description of the property contained in such deed." (Syllabus). This conclusion was based on a change in the county surveyor's statutory duties. In 1900 Ohio Laws 558 (Am. H.B. 467, eff. April 12, 1900), the legislature eliminated the duty of the county surveyor "to examine all deeds before they are entered for transfer...to determin[e] whether they contain a correct description of the lot or parcel of land intended to be conveyed." In light of the conclusion reached in State ex rel. Ballard v. McKelvey, 89 Ohio L. Abs. 407, 184 N.E.2d 124 (C.P. Monroe County 1961) that a county auditor has the implied authority to require the county engineer to review all deeds and other instruments of conveyance before they are transferred upon the tax list, rendered subsequent to this statutory amendment and the issuance of 1936 Op. No. 6120, I must overrule 1936 Op. Att'y Gen. No. 6120, vol. III, p. 1460.

The only instance in which a county auditor will be excused from his mandatory duty to transfer title to real property on the tax list is when the description contained in the deed is legally insufficient. As stated in Op. No. 80-029 at 2-119:

The only exception which the courts have recognized to the mandatory nature of the county auditor's duty to process a deed is that a county auditor may refuse to transfer a conveyance of real estate upon the tax list if the description of the land to be conveyed is legally insufficient. State ex rel. Ballard v. McKelvey...As long as the description in the instrument is sufficient to identify the property conveyed, the auditor is able to compile the required tax list and duplicate...I conclude, therefore, that the auditor has no authority to pass upon the validity or legal sufficiency of instruments purporting to transfer an interest in real estate, provided that there is no question about the location of the real estate to be conveyed...(Citations omitted.)

Thus, a county auditor has a mandatory duty to transfer a parcel of land on the tax list upon being presented with a legally sufficient description of the parcel. "The fact that title to [a parcel] is not in the name of the grantor does not relieve the auditor from the performance of his duty which arises upon application and presentation of [a] ... deed." 1942 Op. Att'y Gen. No. 5142, p. 351, 353. As set forth in State ex rel. Ballard v. McKelvey:

[S]o long as a description [in the instrument of conveyance] is correct, neither the Auditor nor the Recorder guarantees a good title to the real estate involved, and it has been held and is the law that whether or not anyone has title to certain real estate, that fact, standing alone, would not warrant the Auditor to refuse a transfer or the Recorder to record for the reason that neither are guaranteeing the adequacy of title, they only being interested in correct descriptions. (Emphasis added.)

89 Ohio L. Abs. at 411, 184 N.E.2d at 126. See Op. No. 80-029 at 2-119 (stating that to allow an auditor to "pass upon the validity of deeds would result in interference with the ability to protect such interests by recording, as endorsement by the auditor is a prerequisite to the recording of deeds. R.C. 317.22"). Accord 1942 Op. No. 5142. To allow the county auditor, when presented with a deed containing a legally sufficient description, to refuse to transfer a parcel of land because the grantor's name does not correspond with the name on the current tax list, would allow the county auditor to question whether an individual has title to the parcel. Therefore, if the county auditor is presented with an instrument of conveyance that contains a legally sufficient description, he has a mandatory duty to transfer the parcel of land to the purchaser, even though the grantor's name does not correspond with the name in which the property stands on the tax list.

Finally, you have asked whether a county auditor may limit the number of exceptions contained in the description of real property in a deed or other instrument of conveyance. "An exception is separating part of that embraced in the

description [in an instrument of conveyance]...as excepting a particular parcel of land from [the whole parcel being conveyed]." Manley v. Carl, 20 Ohio C.C. 161, 165 (Cir. Ct. Wayne County 1900). You have indicated that the county auditor has been receiving a number of deeds, each containing a large number of exceptions, and the exceptions in the deeds have made it difficult for the county auditor to ascertain the identity of the parcels being conveyed. As discussed above, a county auditor has a mandatory duty to transfer a parcel of land on the tax list when the instrument of conveyance contains a legal description from which the auditor can ascertain the identity of the property to be transferred. See Op. No. 80-029; Op. No. 69-139. Therefore, if an instrument of conveyance contains a legally sufficient description even though it contains more than two exceptions, the county auditor has a mandatory duty to transfer the parcel. If, however, a description in a deed is legally insufficient, the county auditor has no duty to transfer the parcel, therefore, making it immaterial how many exceptions the instrument contains. See State ex rel. Ballard v. McKelvey; Op. No. 80-029; Op. No. 69-139. The correlation between the number of exceptions contained in an instrument, and the legal sufficiency of a deed's description is factual and, hence, the legal sufficiency of each instrument's description must be determined on a case by case basis.

It is, therefore, my opinion and you are hereby advised, that:

1. A county auditor may require that all deeds and other instruments of conveyance be submitted to the county engineer for a determination as to whether the descriptions contained in said instruments are legally sufficient prior to submission to the county auditor for transfer of the real property upon the tax list pursuant to R.C. 319.20. (1936 Op. Att'y Gen. No. 6120, vol. III, p. 1460, overruled.)
2. A county auditor has a mandatory duty to transfer real property on the tax list pursuant to R.C. 319.20 if the instrument of conveyance contains a legally sufficient description, even though the grantor's name shown on the instrument of conveyance does not correspond to the name in which the property stands on the tax list.
3. A county auditor has a mandatory duty pursuant to R.C. 319.20 to transfer real property on the tax list when the instrument of conveyance contains a legally sufficient description, and has no authority to limit the number of exceptions an instrument of conveyance may contain.