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Property—Meeting the Due Process Requirements of Notice to Mortgagees in Tax Sales

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PROPERTY—MEETING THE DUE PROCESS REQUIREMENTS OF NOTICE TO MORTGAGEES IN TAX SALES. *Mennonite Board of Missions v. Adams,* 103 S. Ct. 2706 (1983).

Alfred Jean Moore purchased real property from the Mennonite Board of Missions (MBM) by executing a $14,000 promissory note secured by a mortgage on the real property. The mortgage required Moore to pay all property taxes assessed against the property. Although Moore continued to make mortgage payments to MBM, she neglected to pay the property taxes.

Under Indiana law,[1] when property taxes are delinquent for more than fifteen months, the property can be sold at a tax sale. The statutory provisions require notice of the sale by posting and publication,[2] and notice by certified mail to the property owner.[3] Prior to 1980, however, neither notice by mail nor personal service was given to the mortgagee of property being sold for delinquent taxes.[4]

In accordance with these tax sale statutes,[5] Elkhart County, Indiana, instituted proceedings in 1977 to sell Moore's property for delinquent taxes. Notice was posted at the courthouse, published in the local newspaper, and mailed to Moore. MBM did not receive notification of these proceedings. On August 8, 1977, the property was sold to Richard Adams and neither Moore nor MBM made any attempt to redeem the property.[6]

MBM learned of the tax sale on August 16, 1977, after the right to redeem the property had expired. Adams sought to quiet title to the property in himself, whereupon MBM alleged that the tax sale was invalid since it had received neither notice of the pending tax sale nor notice of the right to redeem. The trial court ruled that the Indiana

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1. IND. CODE § 6-1.1-24-1 (1978). ("Real property on which property taxes have been delinquent for fifteen [15] months . . . is eligible for sale . . . .")

2. IND. CODE § 6-1.1-24-3 (1978).

3. IND. CODE § 6-1.1-24-4 (1978). *See* First Sav. & Loan Ass'n of Cent. Ind. v. Furnish, 174 Ind. App. 265, ___, 367 N.E.2d 596, 600 n.14 (1977). Under Indiana law, a mortgagee was not considered to be a property owner for purposes of these statutes. *Id.*

4. IND. CODE § 6-1.1-24-4.2 (1983). A 1980 addition now requires notice by certified mail to all mortgages of tax delinquent property, provided the mortgagees make an annual request for such notice and agree to pay the expenses incurred in mailing such notice.

5. IND. CODE §§ 6-1.1-24-1 to 6-1.1-24-12 (1978).

6. IND. CODE § 6-1.1-25-1 (1978), provides for a two-year period of redemption during which the owner or "other person who has an interest" in the property may redeem the property by paying the purchase price plus expenses.

statute was valid, and the judgment was affirmed by the Indiana Court of Appeals.[7] On appeal to the United States Supreme Court, the statute was held to violate the due process clause of the fourteenth amendment since it deprived mortgagees of an interest in property without adequate notice and an opportunity to be heard. *Mennonite Board of Missions v. Adams,* 103 S. Ct. 2706 (1983).

To guarantee that every person is accorded due process of law, two fundamental requirements must be fulfilled. First, it has been consistently held that a person is entitled to some notice of proceedings that can deprive him of his property.[8] This axiom, considered to be so self-evident that it can not be given additional weight by any citation of authority,[9] is based on the notions of fairness, justice, and an opportunity to be heard.[10]

The second fundamental requisite of due process of law is that a party be given an opportunity to be heard.[11] To satisfy this requirement, some form of notice of the proceedings must be afforded to interested parties.[12] In determining what constitutes due process of law with respect to the adequacy of notice under the fourteenth amendment,[13] the traditional analysis draws a distinction between actions in personam and actions in rem.[14]

Traditionally, in actions in personam, the sovereign's power was exercised directly over the person.[15] Personal service on a defendant within the state was generally required before there was sufficient jurisdiction to adjudicate his personal liability, a rule which applied whether the defendant was a resident or a non-resident.[16] As a result, it

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7. Mennonite Board of Missions v. Adams, 427 N.E.2d 686 (Ind. App. 1981).

8. Wiswall v. Sampson, 55 U.S. 52, 67 (1852).

9. Roller v. Holly, 176 U.S. 398, 409 (1900).

10. The Railroad Tax Cases, 13 F. 722, 750-52 (C.C.D. Cal. 1882) (there must be notice of a tax assessment and an opportunity to be heard); Baldwin v. Hale, 68 U.S. (1 Wall.) 223, 233 (1864) (parties are entitled to be heard after proper notification); Hagar v. Reclamation District, 111 U.S. 701, 708 (1884) (notice and an opportunity to be heard are essential). *See also* Note, *Requirements of Notice in In Rem Proceedings,* 70 HARV. L. REV. 1257 (1957) [hereinafter cited as Note, *Requirements of Notice*].

11. Grannis v. Ordean, 234 U.S. 385, 394 (1914).

12. *Id.* at 393. Be it through personal service, publication, mailing, or any other manner prescribed by the law of the state.

13. U.S. CONST. amend. XIV, § 1, provides in pertinent part: "No State shall . . . deprive any person of life, liberty, or property, without due process of law . . . ."

14. *See* Hamilton v. Brown, 161 U.S. 256 (1896); Pennoyer v. Neff, 95 U.S. 714 (1878). *See also* Fraser, *Actions In Rem,* 34 CORNELL L.Q. 29, 46 (1948).

15. *See* Pennoyer v. Neff, 95 U.S. 714 (1878). *See also* Note, *Requirements of Notice, supra* note 10.

16. Pennoyer v. Neff, 95 U.S. at 727.

was extremely difficult to subject a non-resident defendant to a personal judgment.[17]

On the other hand, in actions in rem, a court's jurisdictional basis rested on its power over the subject of adjudication itself.[18] Such actions dealt with the status or title to property within the territorial limits of the state, and judgments issued thereupon were considered to be binding against the whole world.[19] The rulings handed down in proceedings in rem seemed to indicate that notice by publication alone was sufficient as to all defendants, whether residents or non-residents, whose identities and addresses were unknown.[20] Further, even where the names and addresses of non-residents were known, notice by publication appeared to be sufficient to satisfy the due process requirements.[21]

In accepting the traditional view that notice by publication was sufficient in all proceedings in rem,[22] there was little discussion of the adequacy of such notice, since publication satisfied the requirement that some form of notice be given.[23] The justification for such minimal notice requirements stemmed from the notion that since the state already had jurisdiction over the res, the purpose of notice was merely to give interested parties an opportunity to be heard, or to warn them that the res was under litigation.[24]

But even this minimal requirement of publication was an advancement from the earlier concept of the state's power over the res. Prior to the publication era, the mere seizure of the thing itself had been considered sufficient to impart notice.[25] Thereafter, it became necessary to give some form of notification of the proceedings beyond that arising from mere seizure.[26] In particular, notice was expected to convey the time and place where an appearance had to be made, although the Court reaffirmed that the precise manner utilized to impart such infor-

17. Comment, *Sufficiency of Notice Under the Requirements of Due Process*, 34 MARQ. L. REV. 120 (1950).

18. The Mary, 13 U.S. (9 Cranch) 126, 144 (1815).

19. Fraser, *supra* note 14, at 46 (1948).

20. Goodrich v. Ferris, 214 U.S. 71 (1909) (notice by posting and publication held sufficient as to non-residents). *See also* Arndt v. Griggs, 134 U.S. 316 (1890).

21. *E.g.*, Huling v. Kaw Valley Ry. & Improvement Co., 130 U.S. 559 (1889) (state's interest was too important to allow the absence of owner to keep it from adjudicating on property within its territorial limits).

22. Fraser, *Jurisdiction By Necessity*, 100 U. PA. L. REV. 305, 307-09 (1951).

23. The Railroad Tax Cases, 13 F. 722, 751 (C.C.D. Cal. 1882).

24. Leigh v. Green, 193 U.S. 79 (1904).

25. Cooper v. Reynolds, 77 U.S. (10 Wall.) 308 (1870) (equating seizure of the property with the levy of a writ of attachment); The Mary, 13 U.S. (9 Cranch) 126, 144 (1815).

26. Windsor v. McVeigh, 93 U.S. 274 (1876) (notice by publication and posting in condemnation proceedings).

mation would not be strictly dictated, as long as some notice was given.[27]

In *Pennoyer v. Neff*,[28] the United States Supreme Court declared that constructive service (posting and publication) was never sufficient against a non-resident defendant in an action in personam.[29] However, the Court upheld notice by publication in proceedings in rem, maintaining that such notification provided the only method for states to validly adjudicate a non-resident's interest in local property.[30]

After the decision in *Pennoyer*, the Court adhered to the notion that service by publication was sufficient to meet the due process requirements of notice to non-resident defendants in proceedings in rem.[31] However, there were still occasions where fairness and justice demanded more than the mere compliance with the minimal requirements of publication.[32] At such times, the Court would seek to determine whether "substantial justice" had been accorded.[33]

As the Court became more concerned with the fulfillment of "substantial justice,"[34] there occured a gradual expansion and strengthening of notice requirements[35]—a move toward notice reasonably calculated to give actual notice.[36] The Court began to take an interest in the probability of a party actually receiving the notice that was provided.[37]

This expansionary trend is illustrated by the Court's ruling in *Mullane v. Central Hanover Bank & Trust Co.*[38] In *Mullane*, where the Court invalidated Central Hanover's attempt to provide notice by publication to the beneficiaries of a common trust fund, the Court concluded that "process which is a mere gesture is not due process."[39] In

27. *Id.* at 279.

28. 95 U.S. 714 (1878).

29. *Id.* at 727.

30. *Id.*

31. Arndt v. Griggs, 134 U.S. 316 (1890) (quiet title action); Huling v. Kaw Valley Ry. & Improvement Co., 130 U.S. 559 (1889) (condemnation of land for a railroad).

32. Roller v. Holly, 176 U.S. 398 (1900) (five days held an unreasonably short time for response).

33. McDonald v. Mabee, 243 U.S. 90, 92 (1917) (notice by publication insufficient where it was known that defendant had left the state intending not to return).

34. *Id.*

35. Milliken v. Meyer, 311 U.S. 457 (1940) (allowed service at defendants usual abode in state and personal service in another state at the same time); Hess v. Pawloski, 274 U.S. 352 (1927) (allowed out of state service by registered mail).

36. Wuchter v. Pizzutti, 276 U.S. 13, 19 (1928).

37. *Id.* at 24.

38. 339 U.S. 306 (1950).

39. *Id.* at 315.

detailing the requirements of due process,[40] the Court voiced its strong lack of confidence in notice by publication[41] and held that such notice was inadequate where the party's name and address were known or easily ascertainable.[42]

Since the Court refused to classify the action in *Mullane* as either in rem or in personam,[43] the case came to be viewed as the beginning of the demise of the traditional distinctions between these two forms of actions.[44] Taking this as an indication that *Mullane* was to be given a broad interpretation and an equally broad application,[45] the Court did not hesitate to extend the principles enunciated in *Mullane* to bankruptcy proceedings,[46] eminent domain actions,[47] and even to proceedings involving the termination of utility services.[48]

Irrespective of these advancements regarding in rem proceedings, the area of tax assessments and sales continued to be excepted from the customary notice practices.[49] Notice by publication alone usually had been sufficient in tax sale proceedings involving non-residents or unknown owners.[50] Further, there was a series of cases indicating that notice by publication and posting would be sufficient even with respect to known residents.[51]

The justifications for treating tax proceedings differently could be traced to the idea that such proceedings were intended to be summary in fashion[52] and, further, that it was considered to be in the public interest to allow the government to collect its revenues without undue delay.[53] An additional justification, the "caretaker theory,"[54] suggested

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40. The Court said that "[a]n elementary and fundamental requirement of due process in any proceeding . . . is notice reasonably calculated . . . to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." 339 U.S. at 314.

41. "Chance alone brings to the attention of even a local resident an advertisement in small type inserted in the back pages of a newspaper . . . ." 339 U.S. at 315.

42. *Id.* at 318.

43. *Id.* at 312-13.

44. Note, *Due Process of Law and Notice by Publication*, 32 IND. L.J. 469, 470-72 (1957).

45. Note, *The Constitutionality of Notice by Publication in Tax Sale Proceedings*, 84 YALE L.J. 1505, 1508-09 (1975) [hereinafter cited as Note, *Notice by Publication*].

46. New York v. New York, N.H. & H.R. Co., 344 U.S. 293 (1953).

47. Schroeder v. City of New York, 371 U.S. 208 (1962); Walker v. City of Hutchinson, 352 U.S. 112 (1956).

48. Memphis Light, Gas & Water Div. v. Craft, 436 U.S. 1 (1978).

49. Note, *Requirements of Notice*, *supra* note 10, at 1266.

50. Ballard v. Hunter, 204 U.S. 241 (1907).

51. Longyear v. Toolan, 209 U.S. 414 (1908) (published notice of delinquency); Leigh v. Green, 193 U.S. 79 (1904) (delinquent taxes); Winona & St. Peter Land Co. v. Minnesota, 159 U.S. 526 (1895) (taxed land erroneously omitted from tax rolls).

52. Note, *Requirements of Notice*, *supra* note 10, at 1266.

53. The Railroad Tax Cases, 13 F. 722, 752 (C.C.D. Cal. 1882).

that a property owner should keep himself abreast of the status of his property.[55] As such, notice was normally considered to be sufficient if the time and place of the hearing was designated.[56]

After *Mullane,* although there seemed to be a reluctance to extend the principles enunciated therein to tax sale proceedings,[57] the Court, in *Covey v. Town of Somers,*[58] indicated a willingness to analyze such cases in accordance with the *Mullane* standards to insure that due process had been accorded.[59] In addition, although state courts in Oklahoma,[60] Oregon,[61] and New York[62] declined to apply the dictates of *Mullane,* state courts in Michigan,[63] Kansas,[64] and Arizona[65] applied the *Mullane* principles to hold notification of tax sales by publication unconstitutional.[66] Thus, although tax sale proceedings had traditionally been excepted from the customary notice requirements,[67] the rationale in *Covey* and the state court decisions discussed above indicated that an analysis in light of the fundamental due process requirements enunciated in *Mullane* was fast becoming the accepted level of review.[68]

In *Mennonite Board of Missions v. Adams,*[69] Justice Marshall, writing for the majority, analyzed the reasonableness of the Indiana notice provisions in light of the developments since *Mullane.* In recognizing that the due process clause of the fourteenth amendment pro-

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54. The requirement that owners of property keep themselves informed of recurring events affecting their property, and if they do not, any loss suffered is their own fault.

55. Note, *Requirements of Notice, supra* note 10, at 1266.

56. *See* Railroad Tax Cases, 13 F. 722, 752 (C.C.D. Cal. 1882).

57. Note, *Notice by Publication, supra* note 45, at 1509-10.

58. 351 U.S. 141 (1956)(mailed notice insufficient to an infirm party).

59. *Id.* at 146.

60. *See, e.g.,* Christie-Stewart, Inc. v. Paschall, 502 P.2d 1265 (Okla. 1972), *vacated and remanded,* 414 U.S. 100 (1973) (notice by publication regarding mineral rights).

61. *See, e.g.,* Umatilla County v. Porter, 12 Ore. App. 393, 507 P.2d 406 (1973) (notice by publication upheld).

62. *E.g.,* Botens v. Aronauer, 32 N.Y.2d 243, 298 N.E.2d 73 (1973), *appeal dismissed,* 414 U.S. 1059 (1973) (published notice of tax sale and right to redeem).

63. *E.g.,* Dow v. State, 396 Mich. 192, 240 N.W.2d 450 (1976).

64. *E.g.,* Board of Sedgwick County Comm'rs v. Fugate, 210 Kan. 185, 499 P.2d 1101 (1972); Chapin v. Aylward, 204 Kan. 448, 464 P.2d 177 (1970).

65. *E.g.,* Johnson v. Mock, 19 Ariz. App. 283, 506 P.2d 1068 (1973); Laz v. Southwestern Land Co., 97 Ariz. 69, 397 P.2d 52 (1964).

66. "[N]otice by publication is not enough with respect to a person whose name and address are known or very easily ascertainable. . . .'" *Laz,* 397 P.2d at 56 (quoting *Schroeder,* 371 U.S. at 212).

67. Note, *Requirements of Notice, supra* note 10, at 1266.

68. Covey v. Town of Somers, 351 U.S. 141 (1956) (notice by posting, publication and mailed notice not sufficient where defendant known to be infirm).

69. 103 S. Ct. 2706 (1983).

tects the deprivation of "life, liberty, or property,"[70] the Court reaffirmed that a state must "provide notice reasonably calculated, under all circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections."[71]

Citing *Mullane* as the controlling authority,[72] the Court began by declaring that a mortgagee does possess a significant property interest which is substantially affected by a tax sale.[73] Noting that a tax sale has the potential to totally dissolve a mortgagee's security interest,[74] the Court concluded that *Mullane* dictates that a mortgagee to given "notice reasonably calculated to apprise him of a pending tax sale."[75]

In disclaiming the sufficiency of notice by posting and publication,[76] the Court took note of the fact that such steps are primarily undertaken to attract prospective purchasers to the tax sale,[77] and further, that such methods of notification are highly unlikely to come to the attention of those with an interest in the property.[78] While noting that the traditional bases of in rem jurisdiction allowed constructive services on non-residents,[79] the Court stated that such constructive notice had never been accepted as being sufficient to bind individuals in actions in personam,[80] and that generally residents have been provided with personal service even in proceedings in rem.[81]

Relying upon decisions rendered subsequent to *Mullane,* the Court noted that publication had been held to provide insufficient notification where the landowner's name was on the official records,[82] notice by posting and publication was inadequate where the property owner's name and address were easily ascertainable from the tax rolls,[83] and that even the posting of notice on a tenant's apartment door had been found to be insufficient under certain circumstances.[84]

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70. U.S. CONST. amend. XIV, § 1.
71. *Mennonite,* 103 S. Ct. at 2709 (quoting *Mullane,* 339 U.S. at 314).
72. *Id.* at 2711.
73. *Id.*
74. *Id.*
75. *Id.*
76. *Id.*
77. *Id.*
78. *Id.*
79. *Id.* at 2711 n.3.
80. *Id.*
81. *Id.*
82. *See, e.g.,* Walker v. City of Hutchinson, 352 U.S. 112 (1956) (condemnation proceeding).
83. *See, e.g.,* Schroeder v. City of New York, 371 U.S. 208 (1962) (notice by posting and publication insufficient in condemnation proceeding).
84. *See, e.g.,* Greene v. Lindsey, 456 U.S. 444 (1982) (notices posted on the doors of tenants'

In declaring that due process required adequate notice for sophisticated creditors as well as those inexperienced in commercial transactions,[85] the Court concluded that "[n]either notice by posting and publication, nor mailed notice to the property owner, [was] means 'such as one desirous of actually informing the [mortgagee] might reasonably adopt to accomplish it.' "[86]

Justice O'Connor, joined by Justice Powell and Justice Rehnquist, dissented,[87] objecting to the majority's broad departure from prior decisions by holding "that before the State conducts *any* proceeding that will affect the legally protected property interests of *any* party, the state must provide notice . . . by means certain to ensure actual notice as long as the party's identity and location are 'reasonably ascertainable.' "[88] The dissenters protested the majority's proscription of the form of service that a state should adopt,[89] and viewed the majority's actions as an adoption of "a per se rule against constructive notice."[90] Additionally, they objected to the potentially immense burden placed on the state by the imposition of a duty to make reasonable efforts to locate and notify any affected parties.[91]

The *Mennonite* decision represents a major extension of the *Mullane* rationale, not only because it involves a direct application of *Mullane* to tax sale proceedings, but also because the Court imposes a requirement on a state to notify landowners, mortgagees, and "those with a legally protected property interest."[92]

Indiana has already amended its code to provide notice to mortgagees,[93] and *Mennonite* seems to require states such as Arkansas[94] to reevaluate their tax sale notice provisions to assure that due process requirements have been satisfied.[95] The ruling in *Mennonite* should be

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apartments held insufficient where it was known that neighborhood children or other tenants removed them).

85. 103 S. Ct. at 2712. "A party's ability to take steps to safeguard its interests does not relieve the state of its constitutional obligation." *Id.*

86. *Id.* at 2711 (quoting *Mullane*, 339 U.S. at 315).

87. *Id.* at 2712.

88. *Id.* (emphasis original).

89. *Id.* at 2713.

90. *Id.* at 2715.

91. *Id.* at 2714-15 (burden not limited to mailing notice, but state may have to check records for each delinquent taxpayer to determine whether mortgage has been paid off or whether address is dependable).

92. *Id.* at 2713.

93. *See supra* note 4.

94. *See* ARK. STAT. ANN. § 84-1128 (Supp. 1983) (providing for the state land commissioner to mail notice only to owners of record, making no mention of mortgagees).

95. For a compilation of the statutes of the fifty states and the District of Columbia, *see*

read as requiring mailed notice in virtually all proceedings adversely affecting an interest in property where the person's name and address are easily ascertainable. Although states will no doubt contend that this will impose an enormous financial burden on already scarce resources, it should be noted that the costs incurred in sending notice, particularly in tax sales, can be added to the purchase price of the property.[96] Further, the Court has emphasized that neither increased costs nor a party's ability to protect himself relieves a state of its constitutional obligation.[97]

Although the Court in *Mennonite* did not indicate whether its ruling would be applied prospectively or retroactively, this is a major consideration. Realizing that the Court in *Linkletter v. Walker*[98] granted itself the power of prospective limitation, such a limitation to prospective tax sales may tend to retard the effectiveness of the principle which the Court enunciated.

Although many will argue for prospective application to avoid destroying the validity of existing tax titles, a retroactive application of the principle prohibiting the deprivation of property without proper notification may correct past violations and maintain consistency with the spirit of the decision.[99] Further, it should also be noted that a retroactive application would not automatically destroy all existing tax titles. Where the owner has abandoned the property, such titles would probably go without challenge.[100]

There are also numerous other justifications for contending that not all titles will be destroyed by retroactive application, particularly since the present case presents an unusual situation in that the mortgagor continued to make payments to the mortgagee while neglecting to pay the property taxes. In most instances, the property owner will pay neither the taxes nor the mortgage, and the mortgagee will institute foreclosure proceedings before a tax sale is required. Thus as a practical matter, there will not be many mortgages whose interests are terminated due to tax sales.

Note, *Notice by Publication, supra* note 45.

96. *Id.* at 1515. *See also* ARK. STAT. ANN. §§ 84-1126 and 84-1130 (Supp. 1983).

97. *Mennonite,* 103 S. Ct. at 2712.

98. 381 U.S. 618 (1965). The Court announced that the exclusionary rule announced in Mapp v. Ohio, 367 U.S. 643 (1961), would be given only a prospective application, while stating that in other cases, whether civil or criminal, the Court would "weigh the merit and demerits in each case by looking to the prior history of the rule in question, its purpose and effect, and whether retrospective operation would further or retard its operation." 381 U.S. at 629.

99. *See* Note, *Notice by Publication, supra* note 45, at 1516-17.

100. *Id.* at 1517.

Further, although tax deeds are generally "not acceptable as a basis for title in Arkansas . . . . Nevertheless, a tax deed is color of title, and may be accepted in conjunction with evidence of adverse possession."[101] Since suits in Arkansas for the recovery of land must generally be brought within seven years,[102] it is clear that "the doctrine of adverse possession would defeat challenges to most older deeds."[103] Moreover, where a tax title is invalidated, the purchaser will still recover the price paid, expenses and reasonable interest, while he would only lose his windfall.[104] Arkansas also has a two-year limitations period on all actions challenging the sale of land for delinquent taxes,[105] so it appears that a retroactive application would not have a devastating effect.

It is not immediately clear just how far a state must go to ascertain the name and whereabouts of interested parties in various types of proceedings. As a starting point, it appears that the present ruling is limited to parties whose names are a matter of public record,[106] although the state may have to resort to extra efforts if the address is not also included.[107]

Since the case was decided under the due process clause of the fourteenth amendment, it would appear to be applicable to all "proceedings where notice must be given to persons whose interests are affected,"[108] although there will probably be exceptions for particular

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101. Committee on Jurisprudence and Law Reform, *Proposed Arkansas Title Standards*, 16 ARK. L. REV. 376, 384 (1961-62). Although color of title is not essential to acquiring title by adverse possession, it does allow a party in active possession of a portion of the property covered by the tax deed to be deemed in constructive possession of all of the property referred to in the tax deed, whereas without the color of title provided by the tax deed the party would only be deemed in adverse possession of the small plot he actually possessed. Further, since the payment of taxes on unimproved and unenclosed land for seven years under color of title is deemed to be actual possession of the property, it is evident that color of title can be an extremely important benefit from having a void tax deed. *See* ARK. STAT. ANN. §§ 37-101 and 37-102 (1976). *See also* Dierks Lumber & Coal Co. v. Vaughn, 131 F. Supp. 219 (1954) (details Arkansas law on adverse possession and importance of color of title); Bradbury v. Dumond, 80 Ark. 82, 96 S.W. 390 (1906)(deed based on void tax sale gives color of title).

102. ARK. STAT. ANN. § 37-101 (1962).

103. Note, *Notice by Publication, supra* note 45, at 1517. *See also* Nunn v. Mitchell, 210 Ark. 422, 196 S.W.2d 576 (1946) (challenge to title acquired by adverse possession was barred, notwithstanding that the defending party had not complied with notice requirements).

104. ARK. STAT. ANN. § 84-1130 (Supp. 1983).

105. ARK. STAT. ANN. § 84-1118 (1980).

106. *Mennonite*, 103 S. Ct. at 2711.

107. *Id.* at 2711 n.4.

108. Fraser, *supra* note 22, at 316. Other situations in which a person other than the owner may be entitled to notice include persons with an easement of record, persons with a leasehold interest in the property, probate proceedings, divorce proceedings, and custody/adoption

proceedings.[109] Viewed in this light, the instant case seems to require governmental and private parties to notify affected parties where their names and addresses are known or on public record.

Jerry L. Malone

proceedings.

109. *See, e.g.*, F. JAMES & G. HAZARD, CIVIL PROCEDURE §§ 11.22, 11.29, and 12.18 (2d ed. 1977) (class actions generally excepted, but where damages are sought, notice must be given to the entire class).