

**Townsites, Platting Of.**

Original plat of, or adjoining unincorporated town has a right to take the name of the town. A second plat including portion of same town has no right to assume the name of the town and should be approved by county commissioners before filing.

August 31, 1910.

Mr. S. P. Wilson,  
County Attorney,  
Deer, Lodge, Mont.

Dear Sir:—

Your letters of August 23 and 24 have been received, requesting the further opinion of this office upon the following statement of facts:

"For many years there has been an unincorporated and unplatted village in the county, which has consisted merely of a cluster of residences and business houses, including a post-office, standing upon about a quarter section of territory. A townsite plat of the territory lying adjacent to the village was filed, taking the name of the village. This plat was filed as an original townsite. It includes only a small portion, if any, of the territory naturally within the limits of the village. Subsequently, another townsite plat was filed by different parties, of the ground upon which the village stands. This second plat is also given the name by which the village has always been known.

1. Has the board of county commissioners any authority, or are they under any obligation, to reject and disapprove the first plat because of its having been given the name of the village and because of its having been filed as an original townsite?

2. Has the second plat, by reason of its being largely off the ground upon which the village stands, any preferred right over the first to take the name of the village or to be filed as the original townsite?

3. Assuming that the first plat takes a portion of the ground upon which the cluster of houses and business houses stand, would this have any effect upon their right to assume the name of the village and to file a plat as an original townsite?

Answering the first question it is our opinion that the first plat had a right to take the name of the town, and also to be filed as an original plat, and that, therefore, the county commissioners would have no right to disapprove it upon this ground.

In answer to the second question, if the first plat had a right to take the name of the village, as I believe it had, then the second plat would have no right to assume such name. Under our opinion to you of August 20th, we held that the second plat would probably be construed as an addition to the first townsite, and should, therefore, be approved by the county commissioners before filing. We do not think that the mere fact that the first plat takes a portion of the ground upon which the cluster of residences or business houses stand would have any effect upon the right of the persons platting the first townsite to assume the name of the village and to file the plat as an original townsite.

This is a difficult matter to handle owing to an apparent hiatus in the law regarding the platting of unincorporated townsites, and we believe it would be advisable if the different parties are not satisfied with the opinion herein expressed, to settle the controversy in court.

Yours very truly,

ALBERT J. GALEN,  
Attorney General