

VOLUME NO. 35

Opinion No. 35

ABSTRACTS — Title abstractor, certificate of; LAND CLASSIFICATION — Certificate of title abstractor, when no dedication of streets, alleys, playgrounds, etc.; REAL PROPERTY, SUBDIVISION — Certificate of title abstractor, requirement of. Sections 11-601, 11-602, 11-607, 11-614, R.C.M. 1947, as repealed by Chapter 500, Session Laws of 1973; section 11-3865, R.C.M. 1947.

HELD: Abstract examination and certificate from licensed abstractor is not required when lands outside city are surveyed and certificate of survey or plat is prepared for one or more tracts with no dedication for streets, alleys, playgrounds or other purposes.

November 14, 1973

Mr. Arthur W. Ayers, Jr.
Carbon County Attorney
County Attorney's Office
Red Lodge, Montana 59068

Dear Mr. Ayers:

You have requested my opinion concerning the following question:

Is an abstract examination and certificate from a licensed abstractor required when lands outside a city are surveyed and a certificate of survey or plat is prepared for one or more tracts, but there is no dedication whatsoever for streets, alleys, playgrounds, or other purposes?

As you know, until July 1, 1973, your question involved chapter 6 of Title 11, Revised Codes of Montana, 1947. On July 1, 1973, Chapter 500, Laws of 1973, became law and repealed all of chapter 6 of Title 11 and set forth a new subdivision act, the Montana Subdivision and Platting Act. For your information, I shall attempt to answer your question according to the law both prior and subsequent to July 1, 1973.

According to now-repealed section 11-601, R.C.M. 1947, a survey and plat were required for any tract of land within the limits of any city or town or for any addition to a city or town. That section stated:

Any person, company, or corporation, who may lay out any city or town, or any addition to any city or town, or any tract of land within the limits of any city or town, or townsite, or transfer any lots, blocks, or tracts therein, must cause to be made an accurate survey and plat thereof, and cause the same to be recorded in the office of the county clerk and recorder of the county in which said land lies.

Section 11-602, R.C.M. 1947, also now repealed, set forth what such a plat was to contain, including a dedication of part of the land for streets, alleys, playgrounds, etc.

The facts as stated in your question did not specify the size of the tracts in question nor whether they were to be an addition to a city or town. However, since the land was outside a city or town and there was no dedication of part of the land for street, alleys, playgrounds, etc., as was required by former section 11-602, R.C.M. 1947, for any addition to any city or town, I assume that these tracts, regardless of their size, were not to be an addition to a city or town.

Section 11-607, R.C.M. 1947, now repealed, provided in pertinent part as follows:

(1) The owner of the land so surveyed and platted must have prepared and file with said plat an abstract of the title of the land; such abstract of title must be prepared and **certified to by an abstractor** who has been duly qualified to engage in the business of compiling abstracts of titles to real estate in the state of Montana; such abstract of title must be **submitted to the county attorney of the county when said platted land is outside of any city or town ... to examine** and endorse on said abstract of title his examination of the same, and that the person making the certificate of dedication is the owner in fee simple of said land so platted. ... (Emphasis supplied)

In addition, section 11-614, R.C.M. 1947, now repealed, required that small tracts containing less than ten acres or any irregularly shaped tracts of land, the acreage of which could not be determined without a survey, be surveyed, platted, **certified**, and filed in the office of the clerk and recorder of the county in which said land lies, according to the other provisions of chapter 6, Title 11, before any part of said land was sold or transferred. Section 11-614, supra, stated in pertinent part:

Any person who desires to subdivide and sell or transfer any tract of land in small tracts, such as orchard tracts, vineyard tracts, acreage tracts, suburban tracts, or community tracts, containing less than the United States legal subdivision of ten (10) acres, or who shall subdivide and/or sell or transfer any irregularly shaped tract of land, the acreage of which cannot be determined without a survey, must cause the same to be surveyed, platted, **certified**, and filed in the office of the county clerk and recorder ... **according to the provisions of this chapter** before any part or portion of the same is sold or transferred; ... (Emphasis supplied)

In light of these former statutes, it appears that prior to July 1, 1973, if the tracts in question were outside a city or town and not intended to be an addition to a city or town, and if said tracts were under ten acres or irregularly shaped so that their size could not be determined without a survey, then such tracts were required to be surveyed, platted, and certified according to the other provisions

of chapter 6, Title 11. Since the other provisions as set forth in section 11-607 (1), *supra*, required certification by a qualified abstractor and review by the county attorney, it appears as though such an abstractor's certification and county attorney's review would have been required under the facts of your question.

It is therefore my opinion that, prior to July 1, 1973, according to the provisions as set forth in chapter 6, Title 11, R.C.M. 1947, now repealed, an abstract examination and certificate from a licensed abstractor were required when lands outside a city were surveyed and a certificate of survey or plat was prepared for one or more tracts and there was no dedication whatsoever for streets, alleys, playgrounds, etc., provided that said tracts were under ten acres, or irregularly shaped so that size could not be determined without a survey.

My research reveals that the Montana Subdivision and Platting Act, Chapter 500, Laws of 1973, effective July 1, 1973, makes only one reference to a certificate of a licensed title abstractor. That reference is found in section 7 of the act, which states in pertinent part:

Where a subdivision platted under this section contains land to be dedicated to public use, the subdivider shall submit with the preliminary plat either:

(1) **a certificate of a licensed title abstractor** showing the names of the owners of record of the land to be dedicated and the names of lienholders or claimants of record against the land and the written consent to the dedication by the owners of the land, if other than the subdivider, and any lienholders or claimants of record against the land; or

(2) **title insurance** guaranteeing the public's interest in the dedicated land in a reasonable amount to be determined by the governing body. (Emphasis supplied)

It is clear from section 7, *supra*, codified as section 11-3865, R.C.M. 1947, that only when a "subdivision platted under this section contains land to be dedicated to public use" must the subdivider submit "a certificate of a licensed title abstractor showing the names of the owners of record of the land to be dedicated ... or title insurance guaranteeing the public's interest in the dedicated land".

Since the facts set forth in your request show no dedication of any part of the tracts whatsoever for streets, alleys, playgrounds or other public purposes, section 7 of the Montana Subdivision and Platting Act of 1973 and its requirement of "a certificate of a licensed title abstractor ... or title insurance" do not apparently apply to the subdivision in question.

THEREFORE, IT IS MY OPINION:

An abstract examination and certificate from a licensed abstractor is

not required under the provisions of Chapter 500, Laws of 1973, known as the Montana Subdivision and Platting Act, when lands outside a city or town are surveyed and there is no dedication whatsoever for streets, alleys, playgrounds or other purposes.

Very truly yours,

ROBERT L. WOODAHL
Attorney General