

VOLUME NO. 35

Opinion No. 43

LAND CLASSIFICATION — Subdivision, definition of; REAL PROPERTY — Subdivision, definition of. Sections 11-3861, 11-3862 and 11-3872, R.C.M. 1947.

HELD: A one-time segregation of a single parcel of land, ten (10) acres of less, for sale, rent or lease from the original tract, does not create a subdivision.

December 13, 1973

Senator Jean A. Turnage
District No. 17
Polson, Montana 59840

Dear Senator Turnage:

You have requested my opinion concerning the following question:

Does the one-time segregation of a single parcel of land, ten (10) acres of less, for sale, rent or lease from an original tract result in a subdivision subject to the requirements of the Subdivision and Platting Act of 1973?

The Montana Subdivision and Platting Act of 1973 has been codified in Title 11, chapter 38, Revised Codes of Montana, 1947, beginning at section 11-3859. Section 11-3861 (12), R.C.M. 1947, states in pertinent part:

“Subdivision” means the division of land, or land so divided, into **two (2) or more parcels**, whether contiguous or not, **any of which is ten (10) acres or less ... in order that the title or possession of the parcels or any interest therein may be sold, rented, leased, or otherwise conveyed** either immediately or in the future ... provided further that a division of land is a subdivision **when the division creates a second or any subsequent parcel** for the purpose of sale, rent, lease, or other conveyance **from a tract of land** held in single or undivided ownership on July 1, 1973, **where any of the parcels segregated from the original tract is ten (10) acres or less ...** (Emphasis supplied)

It appears from a clear reading of the foregoing statutory provision that through consistent utilization of the plural term “parcels,” the legislature intended a subdivision to exist by definition in those instances where a division creates more than one parcel of land for sale, rent, lease or other conveyance. In the first portion of the definition, a subdivision is defined as the division of land into “two (2) or more parcels” so that the **parcels** may be “sold, rented, leased or otherwise conveyed.” Such language contemplates the sale of more than one parcel of land and thus the segregation of more than one parcel from the original tract. The second portion of the definition creates a subdivision in those situations where a “second or any subsequent” parcel is divided from a tract of land and the segregated **parcels** are to be sold, rented, leased or otherwise conveyed. By using the terms “second” and “subsequent” in conjunction with the plural form of the word parcel, this portion of the definition anticipates the segregation of more than one parcel from the original tract and the sale, rent or lease of the second or subsequent parcel.

Thus, when one divides a **single parcel** of land of ten (10) acres or less for sale, rent, or lease from an original tract as the situation in your question proposes, that division does not create **two (2) or more parcels segregated from the original tract** and so does not constitute a subdivision.

Additionally, a review of other pertinent provisions of Title 11, chapter 38, supra, serves to substantiate the foregoing interpretation. Section 11-3862 requires the surveying of all real property which is divided into parcels any of which is ten (10) acres or less, and the filing of a certificate of survey by the surveyor in the office of the county clerk and recorder of the county in which the property lies. Section 11-3862 states in pertinent part:

- (1) Except as provided herein, all division of real property made after June 30, 1973, into lots, tracts, or parcels any of which is ten (10) acres or less in size or the boundaries or area of which cannot be determined without a survey or trigonometric calculation, must be surveyed by or under the supervision of a registered surveyor; and a certificate of survey thereof must be completed by the surveyor and filed by him in the office of the county clerk and recorder of the county in which the real property lies. ...

The terms "certificate of survey" and "plat" are defined in section 11-3861, supra, in pertinent part as follows:

As used in this act, unless the context or subject matter clearly requires otherwise, the following words or phrases shall have the following meanings:

(1) "Certificate of survey" means a drawing of a field survey prepared by a registered surveyor for the purpose of disclosing facts pertaining to boundary locations.

(6) "Plat" means a graphical representation of a subdivision showing the division of land into lots, parcels, blocks, streets, and alleys, and other divisions and dedications. ...

Section 11-3872, R.C.M. 1947, distinguishes between a certificate of survey and a subdivision plat. Section 11-3872, supra, provides in pertinent part:

(1) Within one hundred eighty (180) days of the completion of a survey the registered land surveyor responsible for the survey, whether he is privately or publicly employed, shall prepare and file for record a certificate of survey in the county in which the survey was made if ...

(2) **A certificate of survey will not be required for any survey ... which will become part of a subdivided plat** being prepared for recording under the provisions of this act. ... (Emphasis supplied)

A subdivision plat is, therefore, required only in the case of an actual subdivision. A one-time division which creates a **single** ten (10) acre or less parcel segregated from the original tract for the purpose of sale, rent, lease or other conveyance, does not constitute a subdivision, but that single parcel must be surveyed and a certificate of survey thereof filed with the clerk and recorder.

Your letter refers to 35 **Opinions of the Attorney General**, no. 26, concerning the definition of subdivision in the Montana Subdivision and Platting Act. The facts as set forth in that opinion constituted a subdivision. In that case, it was presumed that the owner of the original tract had previously segregated another parcel of ten (10) acres or less from the original tract for sale, rent, lease or other conveyance. The subsequent conveyance, then, as discussed in the September 4, 1973, opinion, supra, constituted the creation of a subdivision because it resulted in the **segregation from the original tract of two (2) or more parcels**, at least one of which was ten (10) acres or less, for sale or other conveyance immediately or in the future.

It should be noted that the single segregation of a parcel as discussed herein is not a method to be used to circumvent the provisions of the Subdivision and Platting Act. The intent and actions of the owner may show an attempt to subdivide even though an individual transaction may appear to be within the above-stated exception. However, the creation of a de facto subdivision would require the owner of the land to comply with all the requirements of the Subdivision and Platting Act.

THEREFORE, IT IS MY OPINION:

The one-time segregation of a single parcel of land, ten (10) acres or less, for sale, rent or lease from an original tract does not result in the creation of a subdivision subject to the requirements of the Montana Subdivision and Platting Act of 1973.

Very truly yours,

ROBERT L. WOODAHL
Attorney General