

VOLUME NO. 38

OPINION NO. 108

SUBDIVISIONS - Divisions of lots within a city or town, resubdivisions;

CITIES AND TOWNS - Subdivisions, divisions of land, resubdivisions;

MONTANA CODE ANNOTATED - Section 76-3-207(2).

HELD: A platted city does not constitute a platted subdivision for purposes of applying section 76-3-207(2), MCA.

25 September 1980

Norbert F. Donahue, Esq.
Kalispell City Attorney
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Dear Mr. Donahue:

You have requested my opinion on a question which I have phrased as follows:

Does a city constitute a platted subdivision so that a division of one lot or small parcel therein constitutes a resubdivision under 76-3-207(2), MCA?

The problem described in your letter concerns the situation in which a lot or small parcel within the city is divided in half and sold. The city first learns of the division when a building permit is applied for on the half that is sold. Some of these divided lots have no street access which makes providing services such as fire protection and garbage collection, as well as tax collection, difficult.

You have suggested that a platted city itself represents a subdivision, and that therefore an action which results in an increase in the number of lots within the city or which redesigns or rearranges six or more lots within the city must be reviewed as a subdivision pursuant to the mandate of section 76-3-207(2), MCA.

I am unable to concur in this suggestion. While a city and a subdivision may both be platted, a city does not fit within the statutory definition of the term "subdivision." Section 76-3-103(15), MCA, defines that term as follows:

"Subdivision" means a division of land or land so divided which creates one or more parcels containing less than 20 acres, exclusive of public roadways, in order that the title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed and shall include any resubdivision and shall further include any condominium or area, regardless of its size, which provides or will provide multiple space for recreational camping vehicles, or mobile homes.

Clearly a city is not a "division of land or land so divided," nor is a city organized or operated so that "title to or possession of the parcels may be sold." They are two entirely separate entities. If a city were a subdivision, then any addition thereto such as by annexation would have to comply with such requirements as park dedication (§ 76-3-606, MCA), local review as a subdivision (§ 76-3-601, MCA) and state sanitary restrictions (§ 76-4-101, et seq., MCA). This is clearly not the case. I also note that House Bill 528, rejected by the Legislature in 1977, would have amended the statutes to accomplish just what you suggest.

The problems you have raised, however, can be controlled under existing law without indulging in the argument that a platted city is equivalent to a platted subdivision. A division of a lot within a city to transfer one or more parcels less than twenty acres clearly fits within the definition of the term "subdivision" as quoted above. Since that is true, such a division is subject to local review unless it qualifies for an exemption under section 76-3-207(1), MCA. If it does, the notice problem should be cured by section 76-3-301(2), MCA, which requires the clerk and recorder to notify the governing body of any land division falling under the exemptions described by section 76-3-207(1), MCA. The problems you described such as proper street access are susceptible to regulation under existing zoning powers.

THEREFORE, IT IS MY OPINION:

A platted city does not constitute a platted subdivision for purposes of applying section 76-3-207(2), MCA.

Very truly yours,

MIKE GREELY
Attorney General