

Townsites, Filing Plats Of. Plats of Unincorporated Towns.

The plat of an unincorporated townsite, situated on private lands, must be made, certified to, and filed, in accordance with the provisions of Section 5007 to 5013, Political Code, except in so far as where such sections refer to plats of additional townsites of an incorporated town or city.

Helena, Montana, Jan. 16, 1908.

Hon. Theo. Lentz,
County Attorney,
Glendive, Montana.

Dear Sir:—

Your letter of the 13th inst., received, in which you request an opinion upon the following statement of facts:

We have four or five small unincorporated villages in this county situated upon lands owned by private individuals. The land upon which these villages are situated is being platted and the plats presented for filing at the office of the county clerk and recorder. I find no direct authority under our statute requiring these plats to be approved by any person or board before they can be filed. "Kindly give me an opinion from your office as to what authority our county commissioners, county surveyor, county clerk and recorder, have in cases of this kind?"

In our opinion such a plat should be made, certified and filed in accordance with the provisions of Chap. 6, Part IV. Title III of the Pol. Code, and where it is the first plat of the proposed town or city all the sections of said Chapter, except Sections 5007, 5011, 5012 and 5013, apply to the making and filing of such plat. It is true that under Sections 4710.4711 cities and towns are defined as municipal corporations with a population of 300 or more, nevertheless it is our duty to construe the law, if possible, so as to give full effect thereto. There must always be a first plat to every town or city, and very frequently, especially in a territory through which a new railroad is being constructed, it is necessary to have the plat made out and filed before there are three hundred inhabitants in the village.

It would be absurd to hold that incorporated towns and cities must have their lots and streets and alleys, etc. identified in certain ways provided by law, but that villages which sooner or later will become incorporated towns could start out with streets, alleys, etc., plated in an altogether different manner.

You are therefore advised that an individual owning real estate who wishes to have the same platted for the purpose of selling lots, should be required to comply with said Chap. 6, and when the county surveyor, or other qualified surveyor, has surveyed the ground, and made the plats in accordance with the provisions of said Chapter and made his duly verified certificate thereon, as provided by Section 5004, and the owner's certificate of dedication has been placed thereon, as required by Section 5005, that it then becomes the duty of the county clerk, upon the payment of the fees provided for in Section 4635 of the Pol. Code to

file and record such plat. We know of no law giving the county commissioners or county surveyor authority to examine and approve such a plat before it is presented to the county clerk for filing. However, the law provides that a person laying out a townsite "must cause to be made an accurate survey and plat thereof;" and provides further that "the plat must show as follows:" These provisions are mandatory, and if the plat offered to the county clerk did not comply with provisions of said Chap. 6, and did not have the certificate of the surveyor, duly verified, and of the owner, then it would be the duty of the county clerk to refuse to file the same, as the same would not be entitled to filing until the provisions of such law had first been complied with.

Very truly yours,

ALBERT J. GALLEN,

Attorney General.