

Board of County Commissioners, Authority With Respect to the Filing of Plats of an Unincorporated Townsite.

Where two plats of an original townsite are filed, or offered to be filed, having the same name for town and covering the same territory, or territory in conflict, the board of county commissioners has authority to disapprove of second plat when

found in conflict with first, or direct finding of second as an addition to the original townsite where not in conflict. There seems to be a hiatus in our laws with reference to the filing of plats of an unincorporated town. However, under the general provisions of law respecting the executive authority of boards of county commissioners with reference to the government or control of county property where a plat of a proposed townsite, or an addition to an unincorporated town or village is sought to be filed which does not conform to a townsite already platted and recorded, or an addition or part of a town already platted, the board of county commissioners has power and authority to supervise the filing of such plats or additions so as to prevent conflict and confusion.

August 20, 1910.

Mr. S. P. Wilson,
County Attorney, Powell County,
Deer Lodge, Montana.

Dear Sir:

Your letter of August 16th has been received, requesting an opinion of this office upon the following propositions, to-wit:

1. Has the board of county commissioners any authority or control of the platting of an unincorporated townsite; and may they approve or disapprove of a plat of such filed with the county clerk and recorder?

2. If they have such authority, may they reject such plat because the townsite is given the same name as another townsite, a plat of which has been previously filed, (both plats purporting to be of original townsites)?

3. May the board of county commissioners reject or disapprove of either such plats as above indicated, by reason of the failure of the streets and alleys of either one to correspond with those of the other, the territory described in the two plats being adjacent?

Section 3465, Revised Codes of Montana, 1907, provides:

"Any person who may lay out any city, town, or addition to any city or town, 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."

The plat which this section requires to be filed must conform to the provisions of Chapter VI, Part IV, Title III, of the Political Code of Montana; and when such survey and plat as is therein required have been properly prepared and certified to by the surveyor making the same, and the owners certificate of dedication has been placed thereon in conformity to the provisions of said chapter, it then becomes the duty of the County Clerk to receive and record the same, upon the payment of his fee therefor.

Section 3472 provides that the plat shall contain a certificate of approval by the council of the city or town, signed by the mayor and clerk, that the plat conforms to the adjoining additions or parts of the city or town already platted, as near as the circumstances will permit, and that this certificate must be written on the plat before the same is filed in the office of the county clerk.

There is no specific provision in the statutes providing for the approval of plats of proposed new townsites by the board of county commissioners. Where a plat of a proposed new townsite or an addition to an unincorporated town or village is sought to be filed, which does not conform to a townsite already platted and recorded or to an addition or part of the town already platted, who is to determine the matter so as to protect property rights and prevent confusion and disorder? Certainly the law intended that some tribunal should be vested with authority to regulate and control the record of new townsites, and additions to an unincorporated town.

In the case of an unincorporated town which has already filed for record a townsite plat and perchance additions thereto, in the absence of any town council, it would seem that there should be some tribunal authorized to prevent conflicting platting of lots, streets and alleys, and in our opinion this authority is vested in the board of county commissioners of the county in which the townsite or addition is located. Where there is not such a constituted authority, great confusion might result, and an unincorporated city or town would be at the mercy and caprice of speculators. Great conflict might thus be occasioned in the name of the town and in the platting of lots, streets and alleys, and there would be no way of determining which plat is to be considered as official.

In case of incorporated cities the statute is quite specific with reference to conformity of additions to the townsite or parts thereof already platted, and the necessity of approval of such plats before recording; and it seems to us that there is fully as much reason for the close inspection and approval of plats for an addition to an unincorporated town. Until incorporated such towns are under the exclusive jurisdiction and control of the county government, and therefore the board of county commissioners would seem to be the authority in whom is vested judgment and discretion respecting the approval, filing and recording of townsite plats and additions after an original plat of a particular townsite has been placed of record.

It appears to us that in your case, that the second proposed townsite being contiguous, should be considered as an addition to the first, and that this proposed plat should be approved by the board of county commissioners before the clerk should consent to file the same.

If both plats have already been filed by the clerk, we believe the second plat has been improperly filed, if it has the same name as the first, or does not conform as near as may be to the adjoining addition, and has not been approved by the county commissioners, and that the clerk should cancel the filing thereof.

While the statutes do not specifically empower boards of county

commissioners with authority to approve or reject proposed plats to additions of cities or towns, which are unincorporated and have no common council, we believe this power is implied, and should be exercised in a case of this character.

Subdivisions 22 and 25 of Section 2894 Revised Codes, defining the general and permanent powers of boards of county commissioners, provide:

22. To represent the county and have the care of county property, and the management of the business and concerns of the county in all cases where no other provision is made by law."

"25. To perform all other acts and things required by law not in this title enumerated or which may be necessary to the full discharge of the duties of the chief executive authority of the county government."

We trust the foregoing expressions of our views will answer your questions submitted.

Yours very truly,

ALBERT J. GALEN,
Attorney General