Acreage Tracts—City and Town Lots—Dedication—Public Parks and Playgrounds.

Chapter 119 of Session Laws of 1917 construed, and held that owner who has land outside city limits platted is not required to dedicate one-ninth thereto to public for parks and playgrounds.

February 22nd, 1919.

Mr. F. A. Ewald,
Deputy County Attorney,
Great Falls, Montana.

I have your letter of February 14th, asking me to construe Chapter 119 of the Fifteenth Session Laws of 1917 relating to the laying out of city and town lots, acreage tracts, etc. I confess that this Act is a most ambiguous utterance of the law making power which will have to be construed by the supreme court before its exact legal import can be definitely known. Until this is done, however, I am constrained to place the following interpretation upon it.

Let us assume the following statement of facts being substantially the same as are set forth in your letter. A man has become possessed of a tract of land in the State of Montana, together with a desire to separate the urban dweller from his money. The land is located from four to twenty miles from an inhabited city or town. The owner thereof determines to plat and sell his land in "vineyard tracts" or "acreage tracts" of ten acres or less in size, and with that end in view he prepares and files a plat as required by Sec. 3466 of the Codes as amended by the above chapter.

I do not believe that it was the intention of the legislature to solemnly or humourously enact a law requiring this man to dedicate one acre out of each nine to the "public for parks and play grounds." The idea that the "public" will ever become so congested at the rate of one family on each ten acre tract located upon the far remote solitudes of Montana's vast prairies as to require "public parks and play grounds" is so repugnant to common sense that I refuse to entertain it unless positively compelled to by the wording of the law. I believe the following construction can be legally and certainly should be reasonably placed on this legislation. Sections 3465 and 3466 as amended, are

clearly broad enough to include, and do include, "tracts of land outside of the boundaries of any city or town." It is true as you suggest that the use of the word "block" in paragraph 9 of Section 3466 would seem to indicate that the legislature was talking about the ordinary city block; but, the other express language of Section 3465 and 3466 so clearly includes all platted areas outside of cities and towns that I do not believe one can safely say that the word "block" must be given that restricted meaning. Thus far the Act clearly embrases such forty acre tracts as are mentioned in your letter, and, if it were not for the particular language and location in the Act of Section 3478 as amended, I should conclude that one-ninth of the forty acre tract must be dedicated to parks. However, Sec. 3478 apparently deals with a different subject than the two sections which have preceded it. It expressly refers to "small tracts such as vineyard tracts, acreage tracts, suburban tracts or community tracts of small areas less than the United States legal subdivision of ten acres." As to such tracts, Sec. 3478 simply says that they must be surveyed, platted, certified and recorded according to the provisions of this chapter. It does not however, say that one-ninth or any portion of such tracts, must be dedicated to the public for parks and play grounds. I do not believe that it is necessary, in order to comply with the accepted rules of statutory construction, to hold that because the law requires these acreage tracts to be platted and recorded "according to the provisions of this chapter," that such plats must contain a dedication of certain lands for parks and playgrounds.

The foregoing is, in my judgment, the common sense construction to place on this law and I believe it is justified by the ordinary rules of statutory construction.

Respectfully,

S. C. FORD,

Attorney General.