

Townsites—Vacation—Unincorporated Villages.

The provision in section 5308, R. C. M. 1921, as amended by chapter 54, laws of 1929, forbidding the vacation of an unincorporated village or townsite when it contains a post-office, store or other business house, does not apply to a partial vacation of the townsite.

The law does not make provision for vacating a part of such a townsite when the area is less than four blocks.

Mr. E. V. Ahern,
County Attorney,
Havre, Montana.

June 11, 1931.

My dear Mr. Ahern:

You request an opinion whether, under section 5308, R.C.M. 1921, as amended by chapter 54, laws of 1929, a portion of an unincorporated village or townsite may be vacated where the townsite contains a post-office, store or other business house.

Section 5308, before its amendment by chapter 54, provided only for the vacation of villages or townsites in their entirety, and then only when they did not contain a postoffice, a store or other business house. By the amendment of said section this provision was re-enacted and in addition thereto it was provided for the vacation of portions of unincorporated villages or townsites. This additional legislation is incorporated under the guise of a proviso to the original section 5308. A proviso is a clause in a statute excepting something from or restraining or modifying or rendering conditional its operation. This additional legislation is really not a proviso at all as it has nothing whatever to do with what precedes, i. e., section 5308 in its original form. It does not restrain or limit or modify in any way the preceding provision relating to the vacation of villages and townsites in their entirety. It is, on the other hand, new legislation on the subject of vacating villages and townsites in part.

Therefore, it is my opinion that the provision in section 5308, and re-enacted in the amendment, that no townsite could be vacated in its entirety where it contains a postoffice, store, or other business house, is a limitation upon the right to vacate villages and townsites in their entirety and it has no application to the new legislation contained in said chapter 54 relating to partial vacations. This conclusion is somewhat fortified by the fact that the provisions relating to vacating villages and townsites in part does not limit the right to those cases where no postoffice, store or business house exists in the village or townsite, but it is expressly stated that such partial vacations may be made as to any village or townsite which is unincorporated.

You further state that the proposition before you in connection with which you make your inquiry is the vacation of two blocks in an unincorporated town and you inquire what procedure can be taken to vacate such a small area in such unincorporated town. Said chapter 54,

which is the only provision relating to vacating townsites in unincorporated towns in part, limits the right to those cases where it is sought to withdraw not less than four blocks in area. Apparently, there is no method for vacating a portion of an unincorporated town when the portion sought to be vacated is less than four blocks in area.

Very truly yours,

L. A. FOOT,

Attorney General.