

**Opinion No. 125.****Counties—Constitutional Law—Cities  
and Towns—Dedication of  
Streets and Alleys.**

HELD: A County may plat a tract of land and dedicate a portion thereof for streets and alleys without violating Section I, Article XIII of the Montana Constitution.

August 28, 1939.

Honorable W. A. Brown  
State Examiner  
State Capitol Building  
Helena, Montana

Dear Mr. Brown:

You have submitted the following:

“The Board of County Commissioners of Prairie County have taken tax deed to a piece of acreage located in the center of the corporate limits of the Town of Terry. There is no demand for this land in its present state and the Commissioners wish to plat the same into lots and blocks, and then sell same in the usual manner. In order to plat this land, it is necessary that certain streets and alleys be dedicated to the public.

“Can the Commissioners dedicate the land for those streets and alleys, or would this be considered as a viola-

tion of Section One of Article Thirteen of the Constitution of the State of Montana relating to gifts, grants and donations?"

Section I, Article XIII of the Montana Constitution reads:

"Neither the state, nor any county, city, town, municipality, nor other subdivision of the state shall ever give or loan its credit in aid of, or make any donation or grant, by subsidy or otherwise, to any individual, association or corporation, or become a subscriber to, or a shareholder in, any company or corporation, or a joint owner with any person, company or corporation, except as to such ownership as may accrue to the state by operation or provision of law."

The platting by a county of a tract of land into lots, blocks, streets and alleys, thereby dedicating a part thereof for streets and alleys is not in my opinion prohibited by said Section I, Article XIII for the reason that it does not constitute a "grant \* \* \* to any individual, association or corporation." It is rather a grant to the public for the public use and the fee is vested in the public. (*Hershfield v. Rocky Mt. Bell Tel. Co.*, 12 Mont. 102, 115, 29 Pac. 883.) As was said in *State ex rel. Cryderman v. Wienrich, et al.*, 54 Mont. 390, 397, 398, 170 Pac. 942, "\* \* \* the origin and purpose of the restrictions in Section 1, Article XIII, are well known. They arose in a time when the evils of public aid to railroads were notorious; they were intended to prevent the extension of such aid to either individuals or corporations for the purpose of fostering business enterprises, whether of a semi-public or private nature." Such dedication of land for streets and alleys is not a violation of either the letter or the purpose of the constitution.