

No. 158

**TOWNSITE—ABANDON—COUNTY COMMISSIONERS—  
DISTRICT COURT, Section 5308, REVISED CODES OF  
MONTANA, 1935**

**Held:** Where the county has taken tax deed to all the land within the limits of a townsite, nevertheless the county should present a petition for abandonment as required by Section 5308, Revised Codes of Montana, 1935, and proceed to act thereon according to the requirements of said section, so as to give good title and legal description to the lands. Where one lot is owned by an owner who will not join in a petition, then procedure must be by petition to District Court.

July 9, 1941.

Mr. W. R. Flachsenhar  
County Attorney  
Prairie County  
Terry, Montana

Dear Mr. Flachsenhar:

You have submitted the following question:

“Where townsites have been platted and filed, and where the county has taken tax deed to all of the lots in such townsite, is it necessary for the county commissioners to file a petition for the abandonment of such plat the same as any other party, and proceed to take action thereon?”

Section 5308, Revised Codes of Montana, 1935, provides the statutory procedure to follow in abandoning a townsite.

It is my opinion the county commissioners should proceed with a petition as provided by Section 5308, Revised Codes of Montana, 1935, so their findings on the petition may be shown in the record as foundation for their action in annulling the plat and the vacating of the lots, streets, alleys, parks and boulevards, if any, described in said plat. Also it is my opinion that, when no rights of any person have intervened which would

be adversely affected by the cancelation and annulment of the plat and townsite, the county commissioners should then proceed to give the property its legal description by metes and bounds or legal subdivisions, if possible, thus establishing the acreage in legal manner so that good title may be given.

In the case of abandoning a portion of a townsite, unless all of the owners may join in the petition, the second provision of Section 5308, Revised Codes of Montana, 1935, must be followed by a petition to the District Court of the county where such townsite is situate. Even one lot, the owner of which would not join in a petition to the commissioners, would require the second designated procedure.

Sincerely yours,

JOHN W. BONNER  
Attorney General