

## No. 39

**COUNTY COMMISSIONERS—ADDITIONS TO CITIES—  
VACATION OF PLATS**

- Held: 1. The board of county commissioners has no authority to vacate the plat of an addition to a city.  
2. Where a plat of an addition to a city has not been approved by the mayor and a majority of the city council, such addition is not under jurisdiction of city council.

March 4, 1941.

Mr. John D. Stafford  
County Attorney  
Cascade County  
Great Falls, Montana

Dear Mr. Stafford:

You have submitted a copy of the plat of the Second Addition to the Great Falls Townsite and state that the owners of the territory in such addition have petitioned the county commissioners to vacate the plat, with the exception of certain streets and alleys. You further state that two blocks of the addition are situated within the boundaries of the city of Great Falls.

The questions presented are:

1. What is the procedure to be followed in vacating a portion of an addition lying within the boundaries of an incorporated city?
2. May the board of county commissioners vacate a portion of an addition to an incorporated city?
3. If the board of county commissioners may vacate the addition of a portion of the addition, is it permissible to except certain streets and alleys?

Answering these questions in respective order, it should first be observed that the copy of plat you submitted does not show the approval of the mayor and a majority of the council indorsed thereon, as provided in Section 4976, Revised Codes of Montana, 1935, and the territory has not become a part of the city of Great Falls. (*Pool v. Town of Townsend*, 58 Mont. 297, 191 Pac. 385.) A tract of ground within the exterior boundaries of a city is not necessarily "within the limits of a city." (*Farlin v. Hill*, 27 Mont. 27, 69 Pac. 239.)

I conclude, therefore, that the portion of such addition lying within the boundaries of the city of Great Falls is not "within the limits of the city," is not under the jurisdiction of the city council, and it is to be treated in the same manner as other territory embraced in the addition.

Coming now to the second question presented, it appears that the addition was originally planned and the plat thereof filed under provisions of the law then existing, substantially the same as Sections 4976 and 4980 of the Revised Codes of Montana, 1935.

Section 4990, Revised Codes of Montana, 1935, states:

**"Section 4990. Donations or grants on a plat has the effect of a deed.**

Every donation or grant to the public, or to any person, society, or corporation, marked or noted as such on the plat of the city or town, or addition, must be considered, to all intents and purposes, as a deed to the said donee."

Such law was applicable when the streets, alleys and parks in the territory were dedicated.

A statutory dedication by the filing of a plat and the sale of lots by the owner with reference thereto can be withdrawn only by a vacation of the plat under the statute. (16 Am. Jur., Section 53.)

Section 5308 and 5309 of the Revised Codes of Montana, 1935, provide the only statutory authority giving county commissioners power to cancel or annul plats, and specific procedure is outlined therein. Under Section 5308, which is the only section which could conceivably be applicable in this instance, the plats which can be vacated are designated as "a plat of any village or townsite, or a plat of any vineyard tracts, acreage tracts, suburban tracts or community tracts designated in Section 4993."

We are of the opinion that an addition is not included within the ordinary meaning of the terms "vineyard tracts, acreage tracts, suburban tracts or community tracts." Nor can an addition be said to be a "village or townsite." In *Rice v. Colorado Smelting Co.*, 28 Colo. 519, 66 Pac. 894, the word "townsite" is defined as follows:

" . . . . . in the states and territories of the West generally, the words 'town site' mean, unless a different meaning is expressed, that portion of the public domain which is segregated from the great body of government land, by proper procedure and authority, as the site for a town."

The rule is well established, of course, that the board of county commissioners may exercise only powers expressly conferred upon it or necessarily implied from those expressed.

*Lewis v. Petroleum County*, 92 Mont. 563, 17 Pac. (2nd) 60.

*Judith Basin County v. Livingston*, 89 Mont. 438, 298 Pac. 356.

*American Surety Co. of New York v. Clarke*, 94 Mont. 1, 20 Pac. (2nd) 831.

It appears, therefore, that the board of county commissioners has no authority to vacate the plat of the addition.

In view of the fact that we have answered the second question in the negative, it becomes unnecessary to answer the third question.

Sincerely yours,

JOHN W. BONNER  
Attorney General