

Opinion No. 28.

County Clerk—Surveyors and Civil  
Engineers—Lands—Plats—Maps.

**Held:** Under the provisions of Section 4993, Revised Codes of Montana, 1935, as amended, a county clerk has discretionary power to require a grantee of a portion of land subdivided under the provisions of said section to deliver with the deed a plat or map which shall show the legal description and area of the land conveyed.

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April 16, 1945.

Mr. Melvin N. Hoiness  
County Attorney  
Yellowstone County  
Billings, Montana

Dear Mr. Hoiness:

You have requested my opinion concerning the duties and powers of the county clerk with reference to Section 4993, Revised Codes of Montana, 1935, as amended by Chapter 5, Laws of 1939, and Chapter 180, Laws of 1945.

Section 4993, Revised Codes of Montana, 1935, as amended, provides any person who desires to subdivide and sell tracts of land containing less than ten acres must have the same platted, surveyed and certified before sale. An exception is made for parks and playgrounds.

Section 4993 was amended by Chapter 180, Laws of 1945, as follows:

" . . . provided further that the county clerk of any county shall not be required to file any deed for record, which conveyed, or purports to convey, a part of land or parcel of any such platted tract or tracts of less than the United States legal subdivision of ten acres, unless the person presenting such deed for record also delivers to such county clerk a plat or map which has been prepared by a surveyor or civil engineer, which plat or map shall show with particularity the legal description, and area of the land to be conveyed."

It is apparent the purpose of the amendment is to require certainty as to the description contained in conveyances of "a part or parcel of any such platted tract." The amendment—by providing "the county clerk of any county shall not be required to file any deed for record . . . unless the person presenting such deed for record also delivers to such county clerk a plat or map . . . which plat or map shall show with particularity the legal description, and area of the land to be conveyed"—gives the clerk a discretionary power. In other words, if the conveyance offered for record does not convey one or more of the lots as originally platted, but conveys a portion of one or more lots and the description is uncertain, or the exact land meant to be conveyed is not easily identified from the description in the deed, the clerk may then require a map or plat of the property to be conveyed be submitted with the deed.

If the amendment to Section 4993 were construed to mean that it is mandatory in all instances for the clerk to require a plat of each part of a subdivision which is conveyed, such a construction would lead to absurd results as in many instances, deeds would convey all of one or more lots, and land so conveyed could be easily ascertained by reference to the original plat. Also such a construction would be in conflict with the ordinary meaning of "shall not be required." Our Supreme Court in *State v. Bowker*, 63 Mont. 1, 205 Pac. 961, stated:

"The words of the statute are to be given their usual construction and

are presumed to be used in their ordinary sense."

It should also be observed Section 4993, as amended, applies only to the sale of tracts of land of less than ten acres which are subdivided, "such as orchard tracts, vineyard tracts, acreage tracts, suburban tracts, or community tracts" and not to the isolated sale of a small area of land where there has been no subdivision into multiple lots.

It is therefore my opinion that—under the provisions of Section 4993, Revised Codes of Montana, 1935, as amended—a county clerk has discretionary power to require a grantee of a portion of land subdivided under the provisions of said section to deliver with the deed a plat or map prepared by a surveyor or civil engineer, which map or plat shall show the legal description and area of the land conveyed.

Sincerely yours,  
R. V. BOTTOMLY,  
Attorney General