

**Opinion No. 18.  
Cities and Towns—Plats of Cities and  
Towns—Small and Irregular Tracts  
—Recording.**

HELD: 1. Plats, required by Section 11-614, R.C.M., 1947, to be delivered to the Clerk and Recorder with deeds to certain types of tracts and portions of tracts enumerated in that section, need not be recorded with the deed, but are merely to be filed in exactly the same manner as other plats.

2. Recital in a deed of the acreage of the tract conveyed, does not fulfill the requirements of Section 11-614, R.C.M., 1947, and a map or plat must be filed, just as in other cases arising under that section.

3. If a plat has once been filed, it is not necessary to file a plat with each subsequent deed.

4. That portion of Section 11-614, R.C.M., 1947, which makes further sales unlawful until the provisions of the chapter shall be complied with, applies to both irregularly shaped tracts, and tracts subdivided into lots and blocks.

April 25, 1953.

Mr. H. W. Conrad, Jr.  
County Attorney  
Pondera County  
Conrad, Montana

Dear Mr. Conrad:

You have requested my opinion upon several questions, all concerned with the interpretation of Section 11-614, R.C.M., 1947. This Section provides for the platting of small or irregularly shaped tracts of land before sale. It is part of Chapter 6, Title 11, of the Revised Codes of Montana, 1947, entitled "Plats of Cities and Towns and Additions Thereto."

Since 1935 there have been a number of amendments to the section which have greatly changed the original provisions of the statute. The last change which was accomplished by Chapter 227 of the Laws of 1947, was the most extensive, and the one with which most of your questions are concerned. In its present form, as amended by this chapter, it provides:

"Small and Irregularly Shaped Tracts Must Be Platting, Surveyed and Certified Before Sale. Any person who desires to subdivide and sell or transfer any tract of land in small tracts, such as orchard tracts, vineyard tracts, acreage tracts, suburban tracts, or community tracts, containing less than the United States legal subdivision of ten (10) acres, or who shall subdivide and/or sell or transfer any irregularly shaped tract of land, the acreage of which cannot be determined without a survey, must cause the same to be surveyed, platting, certified, and filed in the office of the county clerk and recorder of the county in which said land lies,

according to the provisions of this chapter before any part or portion of the same is sold or transferred; except that it will not be necessary to comply with the provisions of this chapter relating to parks and playgrounds, and such sales or transfers must be made by reference to the plat on file and the numbers of the lots and blocks. It is unlawful for any further sales to be made without a full compliance with the provisions of this chapter, and the surveying and platting of the whole tract, showing the lots sold before the filing of the plat; provided further that until the filing of such plat, or survey, the county clerk of any county shall not record any deed which conveyed, or purports to convey, any irregular shaped tract or part of land or parcel of any such platting tract or tracts of less than the United States legal subdivision of ten (10) acres, unless the person presenting such deed for record also delivers to such county clerk for filing 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, except that no map or plat shall be required in those cases where the parcel of land being conveyed has been previously conveyed by deed or other instrument recorded ten (10) years or more prior to the passage of this Act."

Your questions as set out in your letter, are as follows:

1. When a deed, together with the required plats, is delivered to the Recorder, is the plat to be recorded with the deed, or is the plat merely filed as are other plats?

2. As the 1947 amendment refers to any irregularly shaped tracts of land, the acreage of which cannot be determined without a survey, does the 1947 amendment have any application to a deed of such irregularly shaped tract of land when the acreage is set forth in the deed?

3. After a plat has been once filed, is it necessary to file a plat with each subsequent deed?

4. Does the following provision apply to the small irregularly shaped tracts, which are not platted into lots and blocks, or does it apply only to tracts that are surveyed and platted into lots and blocks?

"It is unlawful for any further sales to be made without a full compliance with the provisions of this Chapter, and the surveying and platting of the whole tract, showing the lots sold before the filing of the plat."

The answer to your first question is contained in the language of the statute itself. Although the section, prior to 1947, provided that:

"Any person who desires to subdivide and sell or transfer . . . must cause the same to be surveyed, platted, certified and recorded . . ." (emphasis supplied.)

it now reads:

"Any person who desires to subdivide and sell or transfer . . . must cause the same to be surveyed, platted, certified and filed in the office of the county clerk and recorder of the county in which land lies . . ." (emphasis supplied.)

The 1947 amendment also added the following language:

" . . . Provided, further that **until the filing of such plat or survey, the county clerk of any county shall not record any deed . . . unless the person presenting such deed for record also delivers to such county clerk for filing a plat or map . . . which plat or map shall show with particularity the legal description, and area of the land to be conveyed . . .**" (Changes by 1947 amendment are in bold type.)

It is the first principle of statutory construction, that the plain meaning of words must be resorted to before resorting to other rules of construction. (Great Northern Utilities Co. vs. Public Service Commission, 88 Mont. 180, 293 Pac. 294). Words of a statute must be given their ordinary meaning, unless their character, context, or subject shows that a different meaning was intended. (Great North-

ern Utilities Co. vs. Public Service Commission, supra). Further, when a provision is added to a statute by amendment, it is presumed that a change from the then existing law was intended. (See State vs. Hays, 86 Mont. 58, 282 Pac. 32; State vs. Brannon, 86 Mont. 200, 283 Pac. 202; Nichols vs. School District, 87 Mont. 181, 287 Pac. 624.)

Under the above rules, the provisions for filing, being clear-cut and self-explanatory, must be given their ordinary meaning. Further, since the requirement for filing replaced the portion of the statute which formerly called for recording, the legislative intention to require filing, and not recording, is plain.

It is therefore my opinion that a plat, delivered to the Clerk and Recorder with a deed, need not be recorded, but is merely to be filed as are other plats.

Your second question is essentially concerned with the sufficiency of a recital of the acreage in a deed. All the provisions relating to irregularly shaped tracts were added to the statute by the 1947 amendment. The first reference in the law is to ". . . any irregularly shaped tract of land, the acreage of which cannot be determined without a survey." However, the statute also provides:

" . . . Until the filing of such plat or survey, the county clerk of any county shall not record any deed which conveyed, or purports to convey any irregular shaped tract. . ." (emphasis supplied.)

The 1947 amendment in addition to adding the words "any irregular shaped tract" also prohibited county clerks from recording any deed to unplatted land unless the person presenting the deed also delivered for filing, a plat or map showing the legal description and area of the land to be conveyed.

Prior to 1947 the statute provided only that the clerk should not be required to record a deed to unplatted land unless accompanied by such a plat or map. Then Attorney General Bottomly ruled that the requirement was not mandatory, but placed discretion in the county clerk to refuse to

record such a deed, if he chose. (Opinions of the Attorney General, Volume 21, Opinion No. 28). The legislature in 1947 removed the discretion from the county clerks, and prohibited the recording of any instrument which deeded land not already platted or mapped and which was not accompanied by a plat or map. This is a positive indication of a legislative intent to require that every irregularly shaped tract must be platted or mapped. The requirement is mandatory, and cannot be satisfied by a recital of the acreage in a deed.

In this connection, however, I call your attention to the last clause of Section 11-614, R.C.M., 1947, providing that no plat or map shall be required where the parcel being conveyed has previously been conveyed by a deed or other instrument recorded ten years or more prior to the passage of the Act. This section exempts all land which was conveyed by an instrument recorded before 1937.

It is therefore my opinion that the recital of acreage in a deed does not satisfy the requirements of Section 11-614, *supra*, and that a map or plat must be filed in those cases not exempted by that section.

The answer to your third question is again, I think, contained in the language of the statute. It provided that the clerk shall not record a deed "until the filing of such plat or survey," unless he presents a map or plat at the time of recording. The purpose of the enactment is to have on file, at the time the instrument is recorded, a plat or map from which the exact description of the land to be conveyed may be ascertained, and the land identified with certainty. If such a plat or map is on file, or is delivered for filing, then the purpose of the statute is fulfilled. It would serve no useful purpose to require each successive transferee to record a plat identical with others already on file.

It is therefore my opinion that if a plat showing the particular tract has once been filed, it is not necessary to file a plat with each subsequent deed.

Your fourth question concerns a section of the statute which was not changed by the 1947 amendment. The

portion of the statute refers to "lots sold before the filing of the plat," and was not changed when the portions referring to irregular tracts were added to the statute. However, the intent of the legislature must be ascertained from a reading of the statute as a whole, and not from the wording of any single part. (*Hilger vs. Moore*, 56 Mont. 156, 182 Pac. 477; *State vs. Board of Commissioners*, 89 Mont. 37, 296 Pac. 1; *In re Wilson's Estate* 102 Mont. 178, 56 Pac. (2d) 733, 105 A. L. R. 367.) The evident purpose of the Legislature was to make the irregular tracts subject to the same restrictions as the subdivided land. The provision making further sales unlawful until the requirements of the chapter are complied with is merely one of these restrictions.

It is therefore my opinion that the provision of the act making further sales unlawful without compliance with the provisions of the chapter applies both to irregularly shaped tracts, and to tracts subdivided into lots and blocks.