

Opinion No. 43.**Small and Irregular Tracts of
Land—Recording.**

HELD: 1. The provisions of Section 11-614, R. C. M., 1947, apply to small and irregularly shaped tracts of land anywhere in the county.

2. The provisions of Section 11-614, R. C. M., 1947, do not apply to sales of single pieces of property which are not part of a tract being subdivided within the meaning of that section.

September 26, 1953.

Mr. John A. Forsythe
County Attorney
Missoula County
Missoula, Montana
Dear Mr. Forsythe:

You have asked my opinion upon the following question:

Does Section 11-614, R. C. M., 1947, refer only to small and irregularly shaped tracts within cities and towns and additions thereto, or does it have application also to small and irregularly shaped tracts situated elsewhere in the county?

Section 11-614, R. C. M., 1947, is included in Chapter 6, Title 11 R. C. M., 1947, which is entitled "Plats of Cities and Towns and Additions Thereto." However, its legislative history reveals that it was intended to apply to small and irregularly shaped tracts anywhere in the county. The present Section 11-614, *supra*, was originally enacted as Section 5, Chapter 119, Laws of 1917. The full title of Chapter 119, *Supra*, was as follows:

"An Act to Amend Sections 3465, 3466, 3471, 3472 and 3478 of the Revised Codes of 1907 of Montana, Relating to the Laying Out, Surveying, Platting and Recording or any City or Town, or Any Addition to Any City or Town, or any Tract of Land Within the Limits of Any City or Town, or any Townsite, or Any Tract of Land Outside of the Limits of Any City or Town Sold in Small Tracts of Acreage Tracts Less than the United States Legal Subdivision, Requiring Sales to be Made by Reference to such Plats and the Numbers of such Lots and Blocks; to Facilitate the Transfer or Taxation of such Property; and to Prevent Boundary Disputes; Providing for Public Parks Within Such Platted and Surveyed Area; to Promote and Preserve the Public Welfare by Prohibiting Certain Things Hurtful to the Comfort, Safety and Welfare of Society by Establishing Such Rules and Regulations for the Use, Sale and Management of Property as May be Conducive to Public Interest; and Providing Penalties for the Violation of Such Provisions." (Emphasis supplied.)

Section 5 of Chapter 119 provided as follows:

"That Section 3478 be, and the same is hereby amended so as to read as follows, to-wit:

"Section 3478. Any person who desires to subdivide and sell or transfer any tract of land in small tracts, such as vineyard tracts, acreage tracts, suburban tracts or community tracts or small areas less than the United States legal subdivision of ten acres, must cause the same to be surveyed, platted, certified and recorded according to the provisions of this chapter before any part or portion of the same is sold or transferred; 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."

It should be noted that Section 5, Chapter 119, did not apply to irregularly shaped tracts of land, nor did it provide that deeds to portions of the tract should not be recorded until the entire tract was platted, and that plat recorded.

The requirement that deeds should not be recorded until a plat was filed was placed in the statute by Chapter 180, Laws of 1945. Refusal by the clerk to place the deed on file was not mandatory, but permissive with the clerk. (See Opinions of the Attorney General, Volume 21 Opinion No. 28.) Chapter 227, Laws of 1947, made it mandatory that the clerk refuse to record a deed to any parcel of a tract which came within the requirements of the statute, and had not been platted, and the plat recorded. This same chapter provided that irregularly shaped tracts should be platted in the same manner.

None of these amendments made any basic change in the statute but merely provided new means of enforcement. It is also evident from the provisions of the statute that its terms have no application to sales of single pieces of property. The 1947 amendments provide that no property conveyed by deed more than ten years prior to 1947 is included in the terms of the Act. The provisions of the Act apply only to sales of parcels of land as part of a subdivision, or to tracts so irregular in shape that their acreage cannot be determined without a survey.

It is, therefore, my opinion that the provisions of Section 11-614, R. C. M., 1947, apply to small and irregularly shaped tracts anywhere in the county.

It is further my opinion that the provisions of Section 11-614, supra, do not apply to sales of single pieces of property which are not part of a tract being subdivided within the meaning of that section.