

VOLUME NO. 35**Opinion No. 65**

CONTRACTS — Contrary to law, void if; COUNTIES — SUBDIVISION — Deeds, conveyances, contrary to law, void if; LAND CLASSIFICATION — Lands, subdivisions, deeds, conveyances, contrary to law, void if; REAL PROPERTY — SUBDIVISION — Deeds, conveyances, contrary to law, void if. Montana Subdivision and Platting Act, Chapter 500, Session Laws of 1973 (sections 11-3859 through 11-3876, R.C.M. 1947); sections 11-3867, 11-3876, 13-101, 13-404, 13-801, 49-109, and 73-203, R.C.M. 1947.

HELD; 1. Contracts to convey land made on or after July 1, 1973, in violation of Montana Subdivision and Platting Act are void.

2. Deeds executed on or after July 1, 1973, are void if they convey land in violation of the Montana Subdivision and Platting Act.

January 28, 1974

Mr. Harold M. Price, Administrator
Division of Planning
Department of Intergovernmental Relations
Capitol Station
Helena, Montana 59601

Dear Mr. Price:

You have requested my opinion concerning the following questions:

1. Are contracts made on or after July 1, 1973, void if they convey land in violation of the Montana Subdivision and Platting Act of 1973?
2. Are deeds executed on or after July 1, 1973, void if they convey land in violation of the Montana Subdivision and Platting Act of 1973?

It is important to recognize at the outset the distinction between a contract, the subject of your first question, and a deed, the subject of your second question. A contract, as defined in section 13-101, Revised Codes of Montana, 1947, is "an agreement to do nor not to do a certain thing." A deed, on the other hand, is not a contract. As defined in **National Fire Insurance Co. v. Patterson**, 170 Okla. 593, 41 P.2d 645, at page 647, a deed is a written conveyance of realty, signed by the grantor, whereby title to realty is transferred from one to another. Section 73-203, R.C.M. 1947, further defines the term conveyance to include "every instrument in writing by which any estate or interest in real property is created, aliened, mortgaged, or encumbered, or by which the title to real property may be affected, except by wills."

According to the factual situation of your first question, the contracts in question violate Chapter 500, Session Laws of 1973, the Montana Subdivision and Platting Act, which became effective July 1, 1973, and is codified in sections 11-3859 through 11-3876, R.C.M. 1947. These contracts or transfers are clearly illegal, in view of section 11-3867 (3), R.C.M. 1947, which states in pertinent part:

...If **illegal transfers or offers of any manner** are made, the county attorney shall commence action to enjoin further sales, transfers, or offers of sale or transfer and compel compliance with all provisions of this act. The cost of such action shall be imposed against the person transferring or offering to transfer the property. (Emphasis supplied)

In instances where contracts do not comply with state law, Montana's case law generally has held those contracts void. It was held in **Johnson v. Kaiser**, 104 Mont. 261, 65 P.2d 1179, at page 274, that a contract is void when prohibited

by a valid statute. Likewise, contracts made in violation of express statutes are contrary to public policy and absolutely and wholly void and of no legal effect. See: **Lebcher v. Board of Commissioners of Custer County**, 9 Mont. 315, 23 P. 713; **State ex rel. Lambert v. Coad**, 23 Mont. 131, 57 P. 1092. Furthermore, **Hames v. City of Polson**, 123 Mont. 469, 215 P.2d 950, at page 485, states:

... "At no time in the history of the common law were contracts in violation of law regarded as valid. ... A contract, though it may be based on consent, derives its obligatory force from the sanction of the law..." *State ex rel. Helena Water Co. v. City of Helena*, 24 M. 521, 63 P. 99.

Certain statutory provisions also support the contention that contracts in violation of statutory provisions are void. Section 13-801, R.C.M. 1947, states in pertinent part:

That is not lawful which is:

1. Contrary to an express provision of law;
2. Contrary to the policy of express law, though not expressly prohibited; ...

and section 13-404, R.C.M. 1947, states in pertinent part:

Where a contract has but a single object, and such object is unlawful, whether in whole or in part, or wholly impossible of performance ... **the entire contract is void.** (Emphasis supplied)

As a general rule, a void contract is of no force and effect, and no rights of any kind vest in favor of anyone because it binds neither party. 17 C.J.S., **Contracts**, sec. 10, pp. 585-586.

Your second question asks whether deeds executed on or after July 1, 1973, which convey land in violation of the Montana Subdivision and Platting Act are void. The distinction between contracts and deeds set forth above must be kept in mind since the case and statutory law in response to your first question about contracts is not necessarily applicable to your second question concerning deeds and conveyances.

My legal research reveals no statutory or case law dealing specifically with this question in Montana. Section 11-3867, supra, provides, however, that a transfer, or offer of transfer, made in violation of the act is illegal. A deed, therefore, which supposedly conveys land in violation of the act is an illegal transfer. Section 11-3876, R.C.M. 1947, provides a criminal penalty for any person who violates any provision of the act. It states in pertinent part:

Any person who violates any provision of this act or any local regulations adopted pursuant thereto shall be guilty of a misdemeanor and punishable by a fine of not less than one hundred dollars (\$100) or more than five hundred dollars (\$500) or by imprisonment in a county jail for not more than three (3) months, or by both fine and imprisonment. ...

Even though there is no specific statutory provision declaring that such an illegal transfer or conveyance is void, it is only logical to conclude that since the transfer itself is illegal, and any **contract** to carry out the illegal transfer is void, the **deed** which purports to effect the illegal conveyance is also void. To hold otherwise would defeat the purpose of the Subdivision and Platting Act and would allow one to take advantage of his own wrongdoing contrary to equity and section 49-109, R.C.M. 1947, which specifically states: "No one can take advantage of his own wrong."

THEREFORE, IT IS MY OPINION:

1. Contracts to convey land made on or after July 1, 1973, in violation of the Montana Subdivision and Platting Act are void.
2. Deeds executed on or after July 1, 1973, are void if they convey land in violation of the Montana Subdivision and Platting Act.

Very truly yours,
ROBERT L. WOODAHL
Attorney General