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Opinion No. 70

COUNTIES — SUBDIVISION — Immediate family, definition of; LAND CLASSIFICATION — SUBDIVISION — Immediate family, definition of; REAL PROPERTY — SUBDIVISION — Immediate family, definition of. Sections 11-3862, 41-1803 and 93-401-16, R.C.M. 1947.

HELD: The term “immediate family” as used in section 11-3862, R.C.M. 1947, means the spouse of the grantor and the children of the grantor by blood or adoption.

February 6, 1974

Mr. Richard J. Conklin
Meagher County Attorney
White Sulphur Springs, Montana 59645

Dear Mr. Conklin:

You have requested my opinion concerning the meaning of the term "immediate family" as used in section 11-3862 of the Montana Subdivision and Platting Act.

The Montana Subdivision and Platting Act of 1973 (hereinafter called the "Act"), is codified in sections 11-3859 through 11-3876, Revised Codes of Montana, 1947. Section 11-3862 states in pertinent part:

(4) Unless the method of disposition is adopted for the purpose of evading this act, the requirements of this act shall not apply to any division of land: ...

(e) which is made for the purpose of a gift or sale to **any member of the landowner's immediate family**; ... (Emphasis supplied)

This section clearly grants an exception from the general provisions of the Act if the landowner divides the land as a gift or for sale to any member of his immediate family, provided it is not done to evade the purpose of the Act.

My research has revealed that the Act does not define "immediate family", even though that term has been defined elsewhere for other purposes. It is therefore necessary to interpret section 11-3862, *supra*, in an attempt to determine the legislature's meaning.

Section 93-401-16, R.C.M. 1947, states in pertinent part: "In the construction of a statute the intention of the legislature ... is to be pursued if possible; ..." Also, in the case of **County of Hill v. County of Liberty**, 62 Mont. 15, at page 17, 203 Pac. 500, the Montana Supreme Court held that the "language of a statute must be construed in accordance with its usual and ordinary acceptation", with a view to giving vitality to and making operative all provisions of the law and accomplishing the intention of the legislature.

The only definition of "immediate family" in Montana's statutes is found in Title 41, Chapter 18, R.C.M. 1947, dealing with labor union regulation. Section 41-1803 states: "'Immediate family' shall include the owner, his spouse, and any children under the age of eighteen (18) years."

Looking to other provisions in Montana's statutes, one finds that for probate exemptions and execution purposes, family is usually construed to include the head of the household, his or her spouse, and their minor children. Chapter 24 of Title 91 of the Revised Codes of Montana, 1947, sets forth provisions for support of a family when the usual provider for the family dies. Those provisions speak of the surviving widow and children as the family. Also, in an 1887 California case, **In re Estate of Noah**, 15 Pac. 287, 290, that state's supreme court held that a statutory allowance made to the family upon the death of the family's usual provider was intended to embrace those who were the immediate family of the deceased: i.e., those who were by law entitled, up to his death, to look to him for support and protection.

In a primary sense family means a collective body of persons, living together in one home, in a permanent and domestic character, under one head or management. **State ex rel. Kemp v. Arnold**, 234 Mo. 154, 113 S.W.2d 143, 146. In most common usage the word implies father, mother and children—one's immediate blood relatives. **Collins v. Northwest Casualty Co.**, 180 Wash. 347, 39 P.2d 986, 989.

It was held, however, in **Lewandowski v. Preferred Risk Mutual Insurance Co.**, 33 Wis.2d 69, 146 N.W.2d 505, 507 (1966), that one's sister, even though an immediate relative, is not a member of one's immediate family. In holding that collateral descent does not bring one into another's immediate family, the Wisconsin Supreme Court in the **Lewandowski** case, *supra*, stated at page 507:

... the term "immediate family" is more restrictive than the word "family" alone. "Immediate family" commonly is understood to mean persons who are related by blood, adoption or marriage and are living together in the same household as a unit. An immediate relative is not necessarily a member of an immediate family. ...

The adjective "immediate," as it is applied to family in section 11-3862, *supra*, expresses the legislature's apparent intent to limit the Act's exemption provision. Because of the adjective "immediate" and the usual meaning given to the term "family," it is my determination that "immediate family" as used in the Montana Subdivision and Platting Act is quite restrictive.

THEREFORE, IT IS MY OPINION:

The term "immediate family," as used in section 11-3862, R.C.M. 1947, means the spouse of the grantor and the children of the grantor by blood or adoption.

Very truly yours,
ROBERT L. WOODAHL
Attorney General