

VOLUME NO. 35

Opinion No. 96

COUNTIES — Subdivision, certificate of survey; **LAND CLASSIFICATION** — Subdivision, certificate of survey; **REAL PROPERTY** — Subdivision, certificate of survey; **SUBDIVISION** — Certificate of survey, filing of. Sections 11-3870 and 11-3861, R.C.M. 1947; Chapter 334, Laws of 1974.

- HELD:** 1. Parcels of land greater than ten (10) acres but less than twenty (20) acres, for which a certificate of survey has been filed prior to July 1, 1974, in accordance with the law in force at the time of the recording, may be conveyed without further compliance with the Montana Subdivision and Platting Act.
2. Parcels of land greater than ten (10) acres but less than twenty (20) acres, which have been surveyed prior to July 1, 1974 but have not had a certificate of survey filed for record prior to that date, do not satisfy the conditions of section 11-3870, R.C.M. 1947, and must be conveyed in compliance with the Montana Subdivision and Platting Act.

August 19, 1974

Mr. Robert L. Deschamps III
Missoula County Attorney
County Attorney's Office
Missoula, Montana 59801

Dear Mr. Deschamps:

I am in receipt of your recent letter wherein you asked my opinion on the following questions:

1. May parcels of land greater than ten (10) acres, but less than twenty (20) acres, for which a certificate of survey has been filed prior to July 1, 1974, be conveyed without further compliance with the Montana Subdivision and Platting Act?
2. May parcels of land greater than ten (10) acres, but less than twenty (20) acres, which have been surveyed prior to July 1, 1974, but have not had a certificate of survey filed for record prior to that date, be conveyed without further compliance with the Montana Subdivision and Platting Act?

The Montana Subdivision and Platting Act (hereinafter called the "Act") is codified in Sections 11-3849 through 11-3876, Revised Codes of Montana, 1947. Chapter 334, Laws of 1974, amended the Act to raise the acreage limitation of what constitutes a subdivision from ten (10) acres or less to any parcel less than twenty (20) acres. Section 11-3870, R.C.M. 1947, was also amended in 1974 to add a validating clause which provides in part:

All plats, certificates of survey, and other title records recorded after June 30, 1973, and prior to the effective date of this act in accordance with the law in force at the time of recording, and all plats, certificates of survey, and other title records recorded prior to July 1, 1973, and which have not been subsequently vacated are hereby validated, notwithstanding irregularities, and have the same legal status as plats recorded under the provisions of this act. (Emphasis supplied)

In construing a statute, the intention of the legislature is always to be pursued if possible. Section 93-401-16, R.C.M. 1947; **State ex rel. Krona v. Holmes**, 114 Mont. 372, 376, 136 P.2d 220 (1943). In determining legislative intent, one must first resort to the plain meaning of the words used. **State ex rel. Cashmore v. Anderson**, ___ Mont. ___, 500 P.2d 921, 924 (1972).

It should be noted that the amendment to the definition of "subdivision" raising the acreage limitation to any parcel less than twenty (20) acres and the amendment to section 11-3870, *supra*, are part of the same legislative act, namely, section 334, Laws of 1974. Consequently, it is apparent that the legislative intent was to raise the acreage limitation to include any parcel of less than twenty (20) acres as of July 1, 1974, except for those divisions of land which have a prior recorded certificate of survey and have not been vacated.

The plain meaning of section 11-3870, *supra*, is that certificates of survey recorded prior to July 1, 1974, have the same legal status as land subdivided under the amended Act. Therefore, parcels of land for which a certificate of survey has been filed prior to July 1, 1974, in accordance with the law in force at the time of the recording, may be conveyed without further compliance with the Montana Subdivision and Platting Act.

You have also requested my opinion as to whether parcels of land greater than ten (10) acres, but less than twenty (20) acres, which have been surveyed prior to July 1, 1974, for which a certificate of survey has not been filed for record prior to that date, may be conveyed without further compliance with the Act?

The validating clause of section 11-3870, *supra*, specifically states that certificates of survey "**recorded** after June 30, 1973, and prior to the effective date of this Act" shall have the same legal status as plats recorded under the provisions of the Act. The plain meaning of the validating clause is that the certificates of survey must be filed for record prior to July 1, 1974, in order to be conveyed without further compliance with the Act.

THEREFORE, IT IS MY OPINION:

1. Parcels of land greater than ten (10) acres but less than twenty (20) acres, for which a certificate of survey has been filed prior to July 1, 1974, in accordance with the law in force at the time of the recording, may be conveyed without further compliance with the Montana Subdivision and Platting Act.

2. Parcels of land greater than ten (10) acres but less than twenty (20) acres, which have been surveyed prior to July 1, 1974, but have not had a certificate of survey filed for record prior to that date, do not satisfy the conditions of section 11-3870, R.C.M. 1947, and must be conveyed in compliance with the Montana Subdivision and Platting Act.

Very truly yours,

ROBERT L. WOODAHL
Attorney General