

VOLUME NO. 36**Opinion No. 33**

COUNTY COMMISSIONERS — Powers, zoning patented mining claims; MINES AND MINING — Zoning of land with mineral resources; ZONING — Mineral resources; Title 11, Chapter 38; Title 16, Chapter 41; Title 16, Chapter 47; Sections 11-3853, 16-4102, 16-4701, 16-4710 R.C.M. 1947; 30 U.S.C. §29.

HELD: County commissioners of a Montana county have the authority to zone land areas which include patented mining claims under section 16-4701, conditional, however, upon the provisions of section 16-4710.

October 14, 1975

Mr. John G. Winston
County Attorney
Silver Bow County
Butte, Montana 59701

Dear Mr. Winston:

I am in receipt of your recent letter requesting my opinion on the following question:

Does a board of county commissioners of a Montana county have the authority to zone land areas which include patented mining claims?

It is my understanding that Silver Bow County has a city-county planning board which has adopted a master plan pursuant to Title 11, Chapter 38. Included in this master plan is the proposed zoning of patented mining claims.

The board of county commissioners is authorized to adopt zoning regulations where they have adopted a comprehensive development plan (master plan) pursuant to Title 11, Chapter 38, by the Zoning Districts Act, Title 16, Chapter 47. Section 16-2710 of this act reads as follows:

No resolution, rule of regulation adopted pursuant to the provisions of this act shall prevent the complete use, development or recovery of any mineral, forest, or agricultural resources by the owner thereof.

Section 11-3853 is identical to section 16-4710, and is found in the City-County Planning Board Act, Title 11, Chapter 38. The inclusion of these sections demonstrates the legislature's awareness of the rights of owners of natural resources. It also reflects the importance of natural resources in Montana and other western states. Wyoming has a similar statute. Section 18-289.1 Wyoming Statutes (1975 Supplement).

It should also be noted that the legislature did not say that land containing natural, or mineral, resources could not be zoned. The legislature has exempted some types of lands from zoning in Title 16, Chapter 41. This act provides for county zoning and planning districts that consist of not less than 40 acres. Section 16-4102 of this act provides in part:

No planning district or recommendations adopted under this act shall regulate lands used for grazing, horticulture, agriculture or for the growing of timber;...

The legislature did not exempt land containing minerals from being zoned in section 16-4710. It is well established that when the terms of a statute are plain, unambiguous, direct, and certain the statute speaks for itself. **Montana Chapter, National Electric Contractors Ass'n. v. State Board of Education**, 137 Mont. 382, 352 P.2d 258 (1960).

Mining claims are patented under federal law. When a mining claim is patented there is an administrative determination that recoverable minerals of value exist on the claim. Upon this determination and after satisfaction of certain statutory requirements by the claimant, he is given a patent or grant of absolute title to the land he has located and claimed. 30 U.S.C. §29. Thereafter, he or whoever succeeds him in interest may use the land as he sees fit. There is no necessary inference from the grant that any owner will choose to mine the claim.

The only difference between patented mining claims and other private land that may have minerals located on it is the administrative determination made concerning the patented claim. Both of these types of land can be zoned; however, both are subject to the conditions of section 16-4710. The best practice would be to insert the conditions of section 16-4710 in the zoning ordinance.

THEREFORE, IT IS MY OPINION:

County commissioners of a Montana county have the authority to zone land areas which include patented mining claims under section 16-4701, conditional, however, upon the provisions of section 16-4710.

Very truly yours,
ROBERT L. WOODAHL
Attorney General