

VOLUME NO. 37

OPINION NO. 1

SUBDIVISIONS - Minor subdivisions, dedication of land to parks and playgrounds, no exemptions; MINOR SUBDIVISIONS - Dedication of land to parks and playgrounds; PARKS AND PLAYGROUNDS - Minor subdivisions, dedication to public use; MONTANA SUBDIVISION AND PLATTING ACT - Minor subdivisions, dedication of land to parks and playgrounds; REVISED CODES OF MONTANA, 1947 - Sections 11-3863(5), 11-3864.

HELD: Minor subdivisions of land as defined in section 11-3863(5), R.C.M. 1947, and MAC Rule 22-2.4B(2)-S410, are not exempted from the requirements of section 11-3864, R.C.M. 1947, for dedicating land to the public for parks and playgrounds.

2 February 1977

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Gentlemen:

You have requested my opinion on the following question:

Are minor subdivisions of land exempted from the requirements for dedication of land to the public for parks and playgrounds, or a cash donation in lieu thereof, contained in the Montana Subdivision and Platting Act, section 11-3859, et seq., R.C.M. 1947, and the regulations adopted pursuant thereto by the Montana Department of Community Affairs?

The Montana Subdivision and Platting Act, at section 11-3864, R.C.M. 1947, comprehensively provides for public dedication of lands in subdivisions for parks and playgrounds. Subsection (1) thereof requires generally that all plats of residential and subdivisions contain a portion of the subdivision's lands permanently dedicated to public parks and playgrounds. Subsection (2) provides, however,

that where, for good cause shown, the dedication of land to parks and playgrounds is undesirable because of "size, topography, shape, location, or other circumstances," the local governing body may accept a cash donation from the subdivider in lieu thereof, based upon the fair market value of the amount of land that otherwise would have been dedicated. Subsections (5), (6), and (7) of section 11-3864 allow the local governing body to waive these dedication and cash donation requirements in certain specific instances. None of these instances in which waiver is allowed is based upon the fact that the subdivision is a "minor subdivision."

The so-called "minor subdivisions" are mentioned in the Subdivision and Platting Act at section 11-3863(5), R.C.M. 1947, which provides:

Local subdivision regulations shall include procedures for the summary review and approval of subdivision plats containing five (5) or fewer parcels where proper access to all lots is provided, where no land in the subdivision will be dedicated to public use for parks or playgrounds and which have been approved by the department of health and environmental sciences where such approval is required by sections 69-5001 through 69-5005; provided that reasonable local regulations may contain additional requirements for summary approval. (Emphasis added.)

This same language is found in Rule 22-2.4B(2)-S410(MAC), adopted by the Montana Department of Community Affairs:

(ii) Minor Subdivision: A subdivision containing five (5) or fewer parcels where proper access to all lots is provided where no land in the subdivision will be dedicated to public use for parks or playgrounds and which has been approved by the Department of Health and Environmental Sciences where such approval is required by sections 69-5001 through 69-5005, R.C.M. 1947. (Emphasis added.)

The only purpose of this statute is to require local governing bodies to adopt procedures for shortened, summary review of small-sized subdivisions which meet certain criteria. One of these criteria is that the subdivision contain only lots, and that it contain no land dedicated to the public

for parks and playgrounds. The evident intent of the legislature was that if publicly-dedicated land were included in the subdivision, then the public interest demanded that it should undergo more thorough review.

The administrative rule merely repeats the statutory language and was adopted for definitional purposes only. It is included in a sub-chapter on general provisions for local regulations which requires that words used in local regulations "be consistent with those of the act and these rules." Thus the rule defining "minor subdivision" does not add any substantive meaning not found in the statute.

Section 11-3863(5) was clearly intended to provide a procedure for summary review, and not to add to or detract from the clear requirements as to parks and playgrounds found in section 11-3864. When sections 11-3863(5) and 11-3874 and the department's rule are construed together, it is clear that all subdivisions must comply with the requirements of section 11-3864 relating to parks and playgrounds. There is simply no exemption in that section for minor subdivisions. If, however, a subdivision containing (5) or fewer parcels, with proper access provided to all lots, complies with section 11-3864 by either making a cash donation in lieu of dedication pursuant to subsection (2), or by obtaining a waiver of the dedication and cash donation requirements pursuant to subsection (5), (6), or (7), then it is entitled to enjoy the summary review and approval procedures adopted by the local governing body pursuant to section 11-3863(5). On the other hand, if a subdivision containing five (5) or fewer parcels complies with section 11-3864 by actually dedicating land to public parks and playgrounds, then it is not eligible for summary review and approval under the local governing body's procedures adopted pursuant to section 11-3863(5).

THEREFORE, IT IS MY OPINION:

Minor subdivisions of land as defined in section 11-3863(5), R.C.M. 1947, and MAC Rule 22-2.4B(2)-S410, are not exempted from the requirements of section 11-3864, R.C.M. 1947, for dedicating land to the public for parks and playgrounds.

Very truly yours,

MIKE GREELY
Attorney General