

VOLUME NO. 38

OPINION NO. 66

LAND - Divisions of land, description in deeds;
DEEDS - Descriptions of land, divisions of land;
SUBDIVISIONS - Deeds, divisions of land, descriptions in
deeds;
MONTANA CODE ANNOTATED - Section 76-3-103.

HELD: A segregation of one or more parcels of land from a larger tract held in single or undivided ownership constitutes a division of land under 76-3-103(3), MCA, regardless of how the larger tract is described in relation to aliquoit parts of a United States government survey.

31 January 1980

Douglas G. Harkin, Esq.
Ravalli County Attorney
Ravalli County Courthouse
Hamilton, Montana 59840

Dear Mr. Harkin:

You have requested my opinion on the following question:

When a recorded deed describes the land conveyed in several aliquoit parts of the United States government survey section, is there a "division of land" under section 76-3-103(3), MCA, if one of those aliquoit parts is sold?

Your question arises because of the fact that two tracts of land of identical acreage may be described differently based upon their location within the United States government survey lines. Similarly, a buyer and seller for whatever reason may decide to describe a tract of land as a number of smaller parcels, rather than as a contiguous whole. For example the $N\frac{1}{2}NE\frac{1}{2}$ of a section of land contains the same acreage as a parcel which contains both the $S\frac{1}{2}S\frac{1}{2}NE\frac{1}{2}$ and the $N\frac{1}{2}N\frac{1}{2}SE\frac{1}{2}$ of a section. The contention is being made that in the latter case the purchaser actually obtained two separate tracts of land, either one of which can be sold without constituting a "division of land" as defined in section 76-3-103(3), MCA. This is important because regulated subdivision activity results only when there has first been a "division of land." See § 76-3-103(15), MCA.

Section 76-3-103(3), MCA, provides:

"Division of Land" means the segregation of one or more parcels of land from a larger tract held in single or undivided ownership by transferring or contracting to transfer title to or possession of the tract of property filing a certificate of survey or subdivision plat establishing the identity of the segregated parcels pursuant to this chapter.

A division of land is a "subdivision" if it creates one or more parcels containing less than 20 acres (see § 76-3-103 (15), MCA).

Section 76-3-103(3), MCA, includes within its coverage segregation of a parcel or parcels of land "from a larger tract held in single or undivided ownership...." Thus, as long as there is an identifiable "larger tract" of land held in "single or undivided ownership," segregation of a parcel of that larger tract constitutes a division of land. The crucial factor is single or undivided ownership of a larger tract, not the description in the deed by which the owner obtained the tract. Otherwise, there could be adjoining and identical 40-acre tracts each purchased in a single transaction in which subdivision consequences would attach depending solely upon where the tract sat within the United States government survey. No such exemption is made or contemplated by the Subdivision and Platting Act.

THEREFORE, IT IS MY OPINION:

A segregation of one or more parcels of land from a larger tract held in single or undivided ownership constitutes a division of land under section 76-3-103(3), MCA, regardless of how the larger tract is described in relation to aliquot parts of a United States government survey.

Very truly yours,

MIKE GREELY
Attorney General