

SUBDIVISION AND PLATTING ACT - Application of "occasional sale" exception;

MONTANA CODE ANNOTATED - Sections 76-3-103, 76-3-104, 76-3-207, 76-3-207(1)(d), 76-3-501, 76-3-601 to 76-3-614;

OPINIONS OF THE ATTORNEY GENERAL - 38 Op. Att'y Gen. No. 117 (1980), 40 Op. Att'y Gen. No. 16 (1983), 40 Op. Att'y Gen. No. 57 (1984), 41 Op. Att'y Gen. No. 3 (1985).

- HELD: 1. Land within a parcel subdivided without subdivision review pursuant to the "occasional sale" exception in the Montana Subdivision and Platting Act may not again benefit from such exception during the 12-month period following the original transfer.
2. When a parcel of land has been divided into parcels of 20 or more acres, the owners of the new parcels are entitled to use the "occasional sale" exception in the Montana Subdivision and Platting Act once during the 12-month period following the conveyance of such parcels.

31 July 1985

Wm. Nels Swandal
Park County Attorney
Park County Courthouse
Livingston MT 59047

Dear Mr. Swandal:

You have requested my opinion concerning a question which I have phrased as follows:

May a parcel of land, which has been created by a division of land, be again divided during the 12 months following its creation without subdivision review pursuant to the "occasional sale" exception in section 76-3-207(1)(d), MCA, of the Montana Subdivision and Platting Act?

Your question has arisen from a factual situation which you described in these terms: Landowner A divides 600 acres he owns into thirty 20-acre parcels by filing certificate of survey number 1; landowners B, C, and D each buy one 20-acre parcel from A; B, C, and D, thereafter, on the same day, file certificates of survey numbers 2, 3, and 4 to divide their 20-acre parcels into two 10-acre parcels and claim exemption from subdivision review on the basis of the "occasional sale" exception. I conclude that the "occasional sale" in section 76-3-207(1)(d), MCA, may be applied only once during a 12-month period with respect to any parcel of land. However, as developed below, I further conclude that, with respect to the transactions giving rise to your question, the "occasional sale" exemption was available to the later divisions of the several 20-acre parcels.

The general operation of the Montana Subdivision and Platting Act has been reviewed in several recent opinions. See 40 Op. Att'y Gen. No. 16 (1983); 40 Op. Att'y Gen. No. 57 (1984); 41 Op. Att'y Gen. No. 3 (1985). For present purposes it is sufficient to emphasize that the terms "division of land" and "subdivision" are separately defined, with the latter referring as a general matter to the creation of parcels containing less than 20 acres. §§ 76-3-103(3) and (15); 76-3-104, MCA. Whether a particular transaction is a "subdivision" or merely a "division of land" is

significant because of the additional regulation attendant to "subdivision" status. See §§ 76-3-501, 76-3-601 to 614, MCA.

Section 76-3-207, MCA, provides various exceptions to the review requirements associated with creation of a "subdivision." Subsection (1)(d) states:

(1) Except as provided in subsection (2), unless the method of disposition is adopted for the purpose of evading this chapter, the following divisions of land are not subdivisions under this chapter but are subject to the surveying requirements of 76-3-401 for divisions of land not amounting to subdivisions:

....

(d) a single division of a parcel outside of platted subdivisions when the transaction is an occasional sale.

The term "occasional sale" is defined in section 76-3-103(7), MCA, as "one sale of a division of land within any 12-month period." The 12-month period begins as of the actual transfer of the parcel of land from the grantor to the grantee. 38 Op. Att'y Gen. No. 117 at 412 (1980). Although the "occasional sale" exception could arguably be construed as applying separately to each new parcel of land created by a subdivision, such an interpretation would effectively permit multiple divisions of land during a 12-month period without compliance with subdivision review requirements. That result, however, runs counter to the express language of section 76-3-207(1)(d), MCA, limiting the exception to "a single division of a parcel"; clearly once a particular parcel of land has benefited from application of the exception, none of the land contained within that parcel may be exempted from subdivision review by operation of the "occasional sale" exception if subdivided during the next 12 months. See 40 Op. Att'y Gen. No. 16 (holding the "occasional sale" exemption unavailable when a certificate of survey created more than one lot). After 12 months each of the newly-created parcels is eligible for application of the occasional sale exemption if the requirements of section 76-3-207(1)(d), MCA, are satisfied. In this regard, I

note that use of the occasional sale exemption, as well as the other exemptions under section 76-3-207, MCA, is unavailable if claimed "for the purpose of evading" the Act's requirements. Determination of that issue, however, is largely one of fact and normally an inappropriate matter for an opinion. See 40 Op. Att'y Gen. No. 16.

Finally, under the factual situation set forth in your letter, the divisions of the 20-acre parcels were eligible for exemption under the "occasional sale" provision because the initial division of the 600-acre parcel into 20-acre parcels was not a "subdivision." As stated above, the exceptions contained in section 76-3-207, MCA, apply only to divisions of land constituting "subdivisions" and are thus irrelevant when only a "division of land" creating parcels of 20 or more acres is involved. None of the land contained within the 20-acre parcels had benefited from the "occasional sale" exception and the new owners of such parcels were entitled to utilize the exception when they later subdivided.

THEREFORE, IT IS MY OPINION:

1. Land within a parcel subdivided without subdivision review pursuant to the "occasional sale" exception in the Montana Subdivision and Platting Act may not again benefit from such exception during the 12-month period following the original transfer.
2. When a parcel of land has been divided into parcels of 20 or more acres, the owners of the new parcels are entitled to use the "occasional sale" exception in the Montana Subdivision and Platting Act once during the 12-month period following the conveyance of such parcels.

Very truly yours,

MIKE GREELY
Attorney General