

OPINIONS OF THE ATTORNEY GENERAL

VOLUME NO. 42

OPINION NO. 36

CONDEMNATION PROCEEDINGS - Status of federal condemnation proceedings as part of "the law of eminent domain" under section 76-3-201(1), MCA;
LAND USE - National forest land exchange as exempt from Subdivision and Platting Act requirements;
PROPERTY, REAL - National forest land exchange as exempt from Subdivision and Platting Act requirements;
SUBDIVISION AND PLATTING ACT - National forest land exchange as exempt from requirements of;
SUBDIVISION AND PLATTING ACT - Status of federal condemnation proceedings as part of "the law of eminent domain";
UNITED STATES - National forest land exchange as exempt from Subdivision and Platting Act requirements;
UNITED STATES - Status of federal condemnation proceedings as part of "the law of eminent domain" under section 76-3-201(1), MCA;
MONTANA CODE ANNOTATED - Title 70, chapter 30; sections 76-3-101 to 76-3-614, 76-3-103(3), 76-3-103(15), 76-3-105, 76-3-201(1), 76-3-301, 76-3-302, 76-3-504(1), 76-3-601(1), 76-3-604(2), 76-3-610(1), 76-3-612(1);
OPINIONS OF THE ATTORNEY GENERAL - 41 Op. Att'y Gen. No. 3 (1985);
UNITED STATES CODE - 16 U.S.C. § 485, 40 U.S.C. § 257, 43 U.S.C. § 1716, 43 U.S.C. § 1718;
UNITED STATES STATUTES AT LARGE - 45 Stat. 1145.

HELD: 1. The term "the law of eminent domain" in section 76-3-201(1), MCA, includes federal condemnation proceedings, and the exemption from coverage under the Montana Subdivision and Platting Act applies to a conveyance of land from a private owner to the United States Department of Agriculture pursuant to 16 U.S.C. § 485.

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2. The filing and enforcement provisions of the Montana Subdivision and Platting Act are inapplicable to transactions in which the United States is the subdivider.

10 November 1987

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

Dear Mr. Swandal:

You have requested my opinion concerning the following questions:

1. Is a conveyance of land from a private owner to the United States Department of Agriculture pursuant to 16 U.S.C. § 485 wholly exempted from coverage under the Montana Subdivision and Platting Act by section 76-3-201(1), MCA?
2. Is a conveyance of land between the United States Department of Agriculture and a private landowner pursuant to 43 U.S.C. § 1716 wholly exempted from the requirements of the Montana Subdivision and Platting Act?

With respect to the first question, I conclude that, because the land was subject to condemnation by the United States in the absence of an agreement and because the term "the law of eminent domain" in section 76-3-201(1), MCA, includes federal condemnation proceedings, the transaction is exempted from regulation under the Montana Subdivision and Platting Act, §§ 76-3-101 to 614, MCA (Act). As to the second question, I conclude that, because of the United States' general immunity from state regulation and the statute's wording, the Act's filing and enforcement provisions are inapplicable to a conveyance by the federal government pursuant to 43 U.S.C. § 1716.

The parcels of land involved in the first question total approximately 710 acres. A private landowner entered into an agreement with the United States Department of Agriculture under which the parcels were conveyed to the United States pursuant to 16 U.S.C. § 485 in exchange for certain federal lands and a sum of money. The

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transaction in the second question involved the corresponding conveyance by the United States of those federal lands pursuant to 43 U.S.C. § 1716. Both transactions constituted a "division of land," as defined in section 76-3-103(3), MCA, of the Act, but whether either created a "subdivision" under section 76-3-103(15), MCA, cannot be determined from the deeds. Nonetheless, the distinction between "division of land" and "subdivision" status has principal importance only with respect to the substantive scope of the Act's regulation and, for present purposes, has no significance. See 41 Op. Att'y Gen. No. 3 (1985).

Relevant to this matter, however, are the Act's filing and enforcement provisions. Section 76-3-301(1), MCA, conditions transfer of title to subdivided lands upon filing of a final subdivision plat. Section 76-3-302, MCA, further proscribes a county clerk and recorder from recording "any instrument which purports to transfer title to or possession of a parcel or tract of land which is required to be surveyed by [the Act] unless the required certificate of survey or subdivision plat has been filed ... and the instrument of transfer describes the parcel or tract by reference to the filed certificate or plat." The Act may be enforced civilly by the county attorney under section 76-3-301(3), MCA, or criminally under section 76-3-105, MCA, against the subdivider. See §§ 76-3-504(1), 76-3-601(1), 76-3-604(2), 76-3-610(1), 76-3-612(1), MCA.

The first question is resolved by section 76-3-201(1), MCA. This provision states:

Unless the method of disposition is adopted for the purpose of evading this chapter, the requirements of this chapter shall not apply to any division of land which:

(1) is created by order of any court of record in this state or by operation of law or which, in the absence of agreement between the parties to the sale, could be created by an order of any court in this state pursuant to the law of eminent domain (Title 70, chapter 30)[.]

There is no dispute that the United States could have initiated a condemnation action in the United States District Court for the District of Montana with respect to the conveyed property. 16 U.S.C. § 485; 40 U.S.C. § 257; Act of Jan. 30, 1929, Pub. L. No. 70-694, 45 Stat. 1145; see United States v. Threlkeld, 72 F.2d 464, 466 (10th Cir. 1934); United States v. Eighty Acres of

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Land, 26 F. Supp. 315, 320 (E.D. Ill. 1939); United States v. Graham & Irvine, 250 F. 499, 501-02 (W.D. Va. 1917); see also Albert Hanson Lumber Co. v. United States, 261 U.S. 581, 587 (1923). The question becomes, therefore, whether the agreement here is among those contemplated in section 76-3-201(1), MCA.

The question would be easily answered but for the parenthetical reference in section 76-3-201(1), MCA, to Title 70, chapter 30, since the United States District Court constitutes a "court in this state" and the resulting order would be "pursuant to the law of eminent domain[.]" It may nonetheless be plausibly argued that the parenthetical reference is intended to limit the scope of "the law of eminent domain" to actions maintained under Montana law and in state courts. Although this reading of section 76-3-201(1), MCA, is not without some force, I reject it as inconsistent with the purpose of the exemption.

The goal of statutory construction is to ascertain the Legislature's intent. E.g., Missoula County v. American Asphalt, Inc., 42 St. Rptr. 920, 922, 701 P.2d 990, 992 (1985); Keller v. Smith, 170 Mont. 399, 405, 553 P.2d 1002, 1006 (1976). Every effort must be made to discern that intent "from the plain meaning of the words of the statute" (Montana Tavern Association v. State ex rel. Department of Revenue, 43 St. Rptr. 2180, 2185, 729 P.2d 1310, 1316 (1986)), and, therefore, "[i]f the statute is plain, unambiguous, direct and certain, the statute speaks for itself and there is nothing left for the Court to construe" (Shannon v. Keller, 188 Mont. 224, 226, 612 P.2d 1293, 1294 (1980)). Where a provision is ambiguous, canons of statutory construction may be applied to assist in determining legislative intent. Missoula County v. American Asphalt, Inc., *supra*. Fundamental canons relevant here are that "the unreasonableness of the result produced by one interpretation is reason for rejecting it in favor of another that would produce a reasonable result," (Johnson v. Marias River Electric Cooperative, 41 St. Rptr. 1528, 1532, 687 P.2d 668, 671 (1984)), and that "[a] statute will not be interpreted to defeat its evident object or purpose," (Lewis and Clark County v. State, 43 St. Rptr. 2150, 2154, 728 P.2d 1348, 1351 (1986)).

As stated above, section 76-3-201(1), MCA, would, but for the concluding parenthetical reference to Title 70, chapter 30, clearly include the present transaction. The parenthetical reference therefore raises the question of whether it was intended to limit the otherwise expansive term "the law of eminent domain" to

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proceedings under the Montana condemnation statute. Such a distinction, however, has no practical basis because federal and state condemnation proceedings have the same purpose and the same degree of finality and specificity with respect to judgments entered. This conclusion is underscored when section 76-3-201(1), MCA, is read as a whole since an actual Montana federal district court condemnation judgment, like that of a state district court, would satisfy the "order of any court of record in this state" portion of the subsection. It seems evident that section 76-3-201(1), MCA, is not designed to relegate federal condemnation proceedings or exchanges of land in contemplation thereof to a lesser status--a result naturally flowing from restricting the scope of "the law of eminent domain" to the provisions in Title 70, chapter 30. The more reasonable interpretation, therefore, favors application of the exemption.

Moreover, the rationale for the exemption in section 76-3-201(1), MCA, apparently relates to the nonconsensual nature of the division of land mandated by court order or, in a situation like that here, to the arguably coercive nature of an agreement entered into under threat of condemnation proceedings. This statutory purpose, of course, would not be furthered by a restrictive interpretation of "the law of eminent domain" since, irrespective of the entity asserting the eminent domain right or the forum where the right will be advanced, the element of coercion remains. Thus, aside from arbitrarily distinguishing between federal and state condemnation proceedings, a restrictive interpretation would run contrary to the reason for the exemption.

In sum, the parenthetical reference to Title 70, chapter 30 in section 76-3-201(1), MCA, does not limit the term "the law of eminent domain" to proceedings under the state statute. The reference was intended only to designate that provision of Montana law which largely governs condemnation matters and was not designed to foreclose applicability of the exemption to agreements providing for divisions of land which could have been effected through federal condemnation proceedings.

There exists, in contrast, no statutory exemption with respect to the conveyance of lands by the United States in the second transaction. That conveyance, although integral to carrying out the first transaction, did not effect a division of land which, but for an agreement, could have been accomplished through a condemnation action, and none of the other express exemptions in section 76-3-201, MCA, or elsewhere in the Act applies.

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Nonetheless, absent congressional authorization to the contrary, the Department of Agriculture is immune from direct enforcement of the Act because of general sovereignty principles. E.g., Seattle Master Builders Association v. Pacific Northwest Electric Power and Conservation Planning Council, 786 F.2d 1359, 1364 (9th Cir. 1986), cert. denied, 107 S. Ct. 939 (1987); United States v. Town of Windsor, 765 F.2d 16, 18 (2d Cir. 1985). Thus, to the extent section 76-3-301(1), MCA, requires the filing of a subdivision plat prior to valid transfer of title, such provision is inoperative as to the United States. See, e.g., In re American Boiler Works, Inc., 220 F.2d 319, 321 (3d Cir. 1955); In re Read-York, Inc., 152 F.2d 313, 316-17 (7th Cir. 1945); Texas v. United States Forest Service, 654 F. Supp. 289, 294 (S.D. Tex. 1986); United States v. South Carolina, 578 F. Supp. 549 (D.S.C. 1983). The Act's criminal and civil enforcement provisions in sections 76-3-105 and 76-3-301(3), MCA, are equally inoperative. Finally, because the Act's survey provisions cannot be enforced against the United States and, therefore, no survey is required, the county clerk and recorder may not refuse to accept the second transaction's deed for filing on the basis of section 76-3-302(1), MCA, as presently drafted.

THEREFORE, IT IS MY OPINION:

1. The term "the law of eminent domain" in section 76-3-201(1), MCA, includes federal condemnation proceedings, and the exemption from coverage under the Montana Subdivision and Platting Act applies to a conveyance of land from a private owner to the United States Department of Agriculture pursuant to 16 U.S.C. § 485.
2. The filing and enforcement provisions of the Montana Subdivision and Platting Act are inapplicable to transactions in which the United States is the subdivider.

Very truly yours,

MIKE GREELY
Attorney General