

# OFFICE OF THE CITY ATTORNEY

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## Legal Opinion 2019-025

**TO:** Mayor John Engen, Dale Bickell, Eran Pehan, Ellen Buchanan, Jeremy Keene, Dennis Bowman, Kevin Slovarp, Troy Monroe, Ben Weiss, Eric Anderson, Mary McCrea, Monte Sipe, Tiffany Brander, Donna Gaukler, Morgan Valiant

**CC:** Legal Department Staff

**FROM:** Jim Nugent, City Attorney

**DATE** September 12, 2019

**RE:** Generally Montana state law sections 70-16-202 and 70-20-307 MCA provides that a land owner of land bounded by a road or street is presumed to own to the center thereof and that transfer of land bounded by a highway passes title to the soil of the highway in front of the center thereof.

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### **FACTS:**

There have been a couple of inquiries earlier this month from different city departments pertaining to ownership of lands bounded by a roadway, street or highway. One inquiry pertained to the excess road area land across Mount from the Mount Street fire station. The other pertained to vacating a portion of Scott Street.

### **ISSUE:**

Who owns the land beneath a roadway, street or highway?

### **CONCLUSION:**

An owner of land bounded by a road or street is presumed to own to the center thereof and transfer of ownership of the land bounded by a roadway, street or highway passes title to the soil of the highway in front of the center thereof.

### **LEGAL DISCUSSION:**

Title 70, chapter 16 Montana Code Annotated is entitled “RIGHTS AND OBLIGATIONS INCIDENTAL TO OWNERSHIP IN REAL PROPERTY”. Section 70-16-202 MCA in this chapter states as follows:

“70-16-202. OWNER OF LAND BOUNDED BY ROAD”. An owner of land bounded by a road or street is presumed to own to the center thereof, but the contrary may be shown.”

Title 70, chapter 20 Montana Code annotated is entitled “TRANSFER FO REAL PROPERTY” Section 70-20-307 MCA states:

“70-20-307 TRANSFER OF LAND BOUNDED BY HIGHWAY-WHAT PASSES. A transfer of land bounded by a highway passes the title of the person whose estate is transferred to the soil of the highway in front and center thereof unless a different intent appears from the grant.”

Also, section 76-3-305 MCA of the Montana Subdivision and Platting Act is entitled “VACATION OF PLATS-UTILITY EASEMENTS”. Section 76-3-305 MCA provides in pertinent part that upon vacation of a plat or portion of a plat, the governing body or the district court “shall determine to which properties the title to the streets and alleys of the vacated portions must revert.” This section of Montana state law then states that the governing body or the district court “shall take into consideration the previous platting, the manner in which the right-of-way was originally dedicated, granted, or conveyed; the reasons stated in the petition requesting the vacation, the parties requesting the vacation and any agreements between the adjacent property owners regarding the use of the vacated area. THE TITLE TO THE STREETS AND ALLEYS OF THE VACATED PORTIONS MAY REVERT TO ONE OR MORE OF THE OWNERS OF THE PROPERTIES WITHIN THE PLATTED AREA ADJACENT TO THE VACATED PORTIONS.” (emphasis added)

With respect to Montana municipal government operations, the governing body of a municipality is the city council.

It should also be noted that as the City of Missoula expensively learned in the Montana Supreme Court inverse condemnation decision is *Wohl v. City of Missoula*, 2013 MT 46, 369 Mont. 108, 300 P 3d 1112(2013) with respect to portions of South Avenue between Russell Street and Reserve Street, when there is excess/extra land in the dedicated public right-of-way, even when it is unplatte, the excess or extra land is owned by the landowners bounding the dedicated public right-of-way for the street.

Clearly the City of Missoula is not the owner of dedicated platted public right-of-way for streets and roads and is not able to sell the dedicated public right-of-way land to a third party for non-road or street purposes when it does not own the land.

## **CONCLUSION:**

An owner of land bounded by a road or street is presumed to own to the center thereof and transfer of ownership of the land bounded by a roadway, street or highway passes title to the soil of the highway in front of the center thereof.

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Jim Nugent, City Attorney

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