

OFFICE OF THE CITY ATTORNEY

435 Ryman • Missoula MT 59802
(406) 552-6020 • Fax: (406) 327-2105
attorney@ci.missoula.mt.us

Legal Opinion 2022-006

TO: Mayor John Engen, City Council, Dale Bickell, Monte Sipe, Jeremy Keene, Kevin Slovarp, Troy Monroe, Ross Mollenhauer, Logan McInnis, Brian Hensel, Dept City Clerk, Dept City Attorney's Office

CC: Department Attorney

FROM: Jim Nugent, City Attorney

DATE March 17, 2022

RE: An owner of land bounded by a road or street is presumed to own to the center thereof.

FACTS:

During city council member discussion in public works committee Wednesday March 16, 2022 pertaining to city policy pertaining to public right-of-way sidewalks there was some confusion about who owns the public right-of-way.

ISSUE(S):

Generally, who owns the plat dedicated public right-of-way lands inclusive of public streets and public sidewalk areas?

CONCLUSION(S):

Generally, Montana state law provides that plat dedicated public right-of-way lands, inclusive of public streets and public sidewalks is presumed to be owned to the center thereof by the owner of the land bounding the road or street.

LEGAL DISCUSSION:

Several provisions of Montana state law recognize a statutory presumption that an owner of land bounded by a road or street is presumed to own to the center thereof. For example, Section 70-16-202 MCA of Montana's "RIGHTS AND OBLIGATIONS INCIDENTAL TO OWNERSHIP IN REAL PROPERTY" provides pursuant to Section 70-16-202 MCA that:

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. (emphasis added).

Examples of when the contrary may be shown include instances when the government, Montana Department of Transportation (MDT) or local government has actually purchased the land or acquired it by eminent domain; or when a dedicated subdivision has a dedicated public right-of-way running along a perimeter boundary of a subdivision; in which case the entire width of the road or street would be owned by the landowners within the subdivision on a single side of the dedicated platted right-of-way, side of the road

Also, Montana state law pertaining to TRANSFER OF REAL PROPERTY provides in Section 70-20-307 MCA that:

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 OF THE CENTER THEREOF, unless a different intent appears from the grant. (emphasis added)

Montana's Subdivision and Platting Act setting forth Montana state laws pertaining to LOCAL REGULATION OF SUBDIVISIONS, sets forth in pertinent parts of Section 76-3-305 MCA entitled VACATION OF PLATS-UTILITY EASEMENTS that:

76-3-305 VACATION OF PLATS---UTILITY EASEMENTS (1) Any plat prepared and recorded as provided in this part may be vacated in either whole or part, as provided by (Montana state laws). Upon vacation the governing body or the district court as provided in 7-5-2502 shall determine to which properties the title to the streets and alleys of those vacated portions MUST REVERT. The governing body or the district court, as provided in 7-5-2502, 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 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).

Clearly based on the three (3) Montana state laws identified and quoted above, the city does not own any land of a dedicated public right-of-way established pursuant to a subdivision plat. Generally, it is common to consider the dedicated platted public rights-of-way land to be administered in the public interest by the applicable local government within whose jurisdiction the platted dedicated public right of way exists.

CONCLUSION(S):

Generally, Montana state law provides that plat dedicated public right-of-way lands, inclusive of public streets and public sidewalks is presumed to be owned to the center thereof by the owner of the land bounding the road or street.

OFFICE OF THE CITY ATTORNEY

/s/ Jim Nugent

Jim Nugent, City Attorney

JN:aa