

Opinion No. 45-4685

April 10, 1945

BY: C. C. McCULLOH, Attorney General

TO: Mr. Richard F. Rowley Acting District Attorney Clovis, New Mexico

{*43} Replying to your letter of April 6, 1945, wherein you request an opinion of this office as follows:

"I would like to have your opinion as to the meaning of Section 14-212 of the 1941 Code as to whether or not statute permits the owner of part of an addition to vacate that portion of a plat which he actually owns without the consent of the owners of other portions of the addition."

As a matter of convenience and record, we quote the above mentioned section:

"14. -- 212. Vacating plat in unincorporated area. -- Any such plat may be vacated by the proprietors thereof at any time before the sale of any lots therein, by a written instrument declaring the same to be vacated, duly executed, acknowledged or proved and recorded in the same office with the plat which is desired to be vacated, and the execution and recording of such writing shall operate to destroy the force and effect of the recording of the plat so vacated, and to divest all public rights in the streets and alleys, laid out and described in such plat. And {*44} in cases where any lots have been sold, the plat may be vacated as herein provided, by all the owners of lots in such plat joining in the execution of the writing aforesaid. When any part of a plat shall be vacated, as aforesaid, the proprietors of the lots so vacated may enclose streets and alleys adjoining said lots in equal proportion."

In the case of Town of Burlington vs. Lambert, 166 Pac. Reporter, page 137, which is a case in point, the court stated:

"All the various provisions of the act must be construed together, so as to give each force and make it effective for some purpose if the same can be done without doing violence to the language used."

In every section under this act (14-201 -- 14-213) wherein the question of vacating a subdivision is mentioned, the unanimous consent of the proprietors of the lots so vacated is mandatory.

In construing the particular portion of the above statute which pertains to your question, it is our opinion that the last sentence of the section wherein it states "as aforesaid", relates back to the previous sentence and requires all of the owners of the lots in the plat to join in the execution of the vacation proceedings.

The interpretation we have placed on Sec. 14-212 appears to be the most reasonable to us and what the legislature must have had in mind, for if it were interpreted otherwise, one or more owners of lots would in most cases have rights and privileges abridged by reason of not having had a voice in vacating a portion of the lots in the subdivision wherein their lots were located.

By THOS. C. McCARTY,

Asst. Atty. General