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October 20, 1955
Opinion No. 55-208

REQUESTED BY: Hon. Douglas Holsclaw
Pima County Representative

OPINION BY: Robert Morrison, The Attorney General
Melvin J. Mirkin, Assistant Atty. General

QUESTION: Does the sale of the fifth lot of
an original single plot automatically
render the owner a subdivider under
the law?

CONCLUSION: Not necessarily, depending upon
surrounding circumstances.

Section 67-1702, ACA, 1939, as amended, defines "subdivided lands" as follows:

" 8. 'Subdivided lands' or 'subdivision' means land subdivided or prepared to be subdivided for the purpose of sale or lease, whether immediate or future, into five (5) or more lots or parcels."

The question is one of fact, rather than law. The pertinent portion of Section 67-1702 is definitive of the term "subdivided", as used in the Real Estate Act. Its purpose is to establish a standard which, when met, places the realty owner in the category of a subdivider. California, which has a statute whose wording is identical with that of Section 67-1702, 8, has had occasion to pass upon the act. The California cases are strict in the application of the term subdivider to persons who propose to deal in real estate in parcels any larger than the number of five. From the case holdings, it does not matter how a man subdivides his land. He may take it in one parcel and sell it off piecemeal, by metes and bounds description, or he may devise any number of schemes in which to make assignment or alienation without a formal or systematic subdivision. By definition, "to subdivide" or a "subdivision" means any piece, parcel, portion or division of land; the term "lots" applies to any portion, piece or division of land and is not limited to regular, spaced, numbered or systematically plotted parcels. Cowell v. Clark, 99 P.2d 594; see Bachenheimer v. Palm Springs Management Corp., 254 P.2d 153.

The question then becomes one primarily of intent. It is obvious that the statute does not apply to the casual sale of

Hon. Douglas Holsclaw
Pima County Representative

October 20, 1955
Page Two

lands, but instead, is limited to lands presently subdivided or prepared to be subdivided.

If the person owning the land should by mere circumstance sell parcel after parcel to the number of five, without having intended or formed a plan for subdivision, he is not a subdivider, and the statute would not have a retroactive effect, so as to make him a subdivider. But, he has prima facie come within the definition of a subdivider and he has some burden to show that he is not violating the statute.

ROBERT MORRISON
The Attorney General

Melvin J. Mirkin

MELVIN J. MIRKIN
Asst. Attorney General

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