

June 9, 1994

OPINION NO. 94-036

The Honorable Richard G. Ward
Ross County Prosecuting Attorney
20 South Paint Street
Chillicothe, Ohio 45601

Dear Prosecutor Ward:

You have requested an opinion regarding the responsibility for maintenance of streets and roads within a subdivided and platted area that is located in the unincorporated territory within three miles of the corporate limits of a municipality when the subdivision and plat have been properly approved by a municipal planning commission. Specifically, you ask:

1. What constitutes a properly adopted plan for purposes of vesting a city planning commission with exclusive jurisdiction over the three mile area outside the city corporation limits under R.C. Chapter 711?¹
2. Once a proper "plan" has been properly adopted by the correct municipal body and a plat of a subdivision within the three mile area has been approved by that municipal body, [do] O.R.C. 5559.01 and 315.08 place the responsibility for maintenance of the streets within said subdivision upon the County Commissioners

¹ This question is a modification, agreed upon by members of our staffs, of the first two questions presented in your request. In connection with this question, you have provided copies of City of Chillicothe, Planning Commission Resolution No. 71-1 (Nov. 17, 1971) (adopting "the Chillicothe Land Use Thoroughfare and Parks Plan; and Water and Sewage System Plan, 1971 including maps and text for Chillicothe, Ohio and surrounding area") and City of Chillicothe Ordinance No. 59-73 (July 23, 1973) (adopting, for "part of the unincorporated territory within three miles of the City of Chillicothe, as set out in the attached map," the subdivision regulations promulgated in Chapters 1111, 1113, and 1115 of the Revised Ordinances of the City of Chillicothe, with specified modifications). It is not the function of this opinion to determine the specific effect or meaning of these local enactments, but rather to set out the statutory requirements to which those enactments must conform.

and the County Engineer even though these offices have no input into approval of the plat or subdivision by the municipality especially when the specifications for streets and sewers required for approval by municipal planning commission do not meet the specifications required by these county offices?

I. Statutory Scheme Governing Municipal Authority over Platting in Unincorporated Territory

The platting of subdivisions of land is governed by the provisions of R.C. Chapter 711. Generally, jurisdiction over the platting of unincorporated territory lies with the board of county commissioners, R.C. 711.041, or a county or regional planning commission, R.C. 711.10, if such commission has been established for that particular area pursuant to R.C. 713.21-.22. When, however, a city or village planning commission has been established pursuant to R.C. 713.01, the unincorporated area surrounding a municipality may come under the jurisdiction of that planning commission. With respect to land outside a municipal corporation, R.C. 711.09 provides, in pertinent part:

Whenever a city planning commission adopts a plan for the major streets or thoroughfares and for the parks and other open public grounds of a city or any part thereof, or for the unincorporated territory within three miles of the corporate limits thereof or any part thereof, then no plat of a subdivision of land within such city or territory shall be recorded until it has been approved by the city planning commission and such approval endorsed in writing on the plat. If such land lies within three miles of more than one city, then this section shall apply to the approval of the planning commission of the city whose boundary is nearest to the land.

....

The planning commission, platting commissioner, or legislative authority of a village may adopt general rules governing plats and subdivisions of land falling within its jurisdiction in order to secure and provide for the coordination of the streets within the subdivision with existing streets and roads or with the plan or plats of the municipal corporation, for the proper amount of open spaces for traffic, circulation, and utilities, and for the avoidance of future congestion of population detrimental to the public health or safety but shall not impose a greater minimum lot area than forty-eight hundred square feet. Such rules may provide for the modification thereof by such planning commission in specific cases where unusual topographical or other exceptional conditions require such modification. The rules may require the county department of health to review and comment on a plat before the planning commission, platting commissioner, or legislative authority of a village acts upon it and may also require proof of compliance with applicable township zoning resolutions regarding lot size, frontage, and width as a basis for approval of a plat.

However, no city or village planning commission shall adopt any rules requiring actual construction of streets or other improvements or facilities or assurance of such construction as a condition precedent to the approval of a plat of a subdivision unless such requirements have first been adopted by the legislative authority of the city or

village after a public hearing. Such rules shall be promulgated and published as provided by sections 731.17 to 731.42 of the Revised Code, and before adoption a public hearing shall be held thereon and a copy thereof shall be certified by the commission, commissioner, or such legislative authority to the county recorder of the county in which the municipal corporation is located.

.... When a plan has been adopted as provided in this section the approval of plats shall be in lieu of the approvals provided for by any other section of the Revised Code, so far as territory within the approving jurisdiction of the commission, commissioner, or such legislative authority, as provided in this section, is concerned.

Approval of a plat shall not be an acceptance by the public of the dedication of any street, highway, or other way or open space shown upon the plat. (Emphasis added.)

See also R.C. 711.041 (plats subject to approval under R.C. 711.09 exempt from requirement that board of county commissioners approve plats certifying lands outside municipalities); R.C. 711.10 (plats of land within three miles of a city as provided in R.C. 711.09 not subject to approval of county or regional planning commission).

R.C. 711.101 further provides, in pertinent part:

As to land falling within its jurisdiction or the jurisdiction of its planning commission, the legislative authority of a municipal corporation, or the board of county commissioners, may adopt general rules setting standards and requiring and securing the construction of improvements shown on the plats and plans required by sections 711.05, 711.09, and 711.10 of the Revised Code.

Such rules may establish standards and specifications for the construction of streets, curbs, gutters, sidewalks, street lights, water mains, storm sewers, sanitary sewers, and other utility mains, piping, and other facilities, may require complete or partial installation of such improvements, and may make such installation a condition precedent to the sale or lease of lots in a subdivision or the issuance of a building permit for the improvement of a lot, and may require in lieu of actual construction a performance agreement and the furnishing of a performance bond or other guarantee or security for the purpose of assuring the installation of such improvements deemed necessary or appropriate in the public interest. The legislative authority of a municipal corporation or the board of county commissioners may accept such performance bond or other guarantee or security, under such conditions and time limitations as it may determine. However, any actual construction or performance bond required by the legislative authority of a municipal corporation or board of county commissioners shall be limited to improvements and facilities directly affecting the lots to be improved or sold.

Such rules may require the submission of plans and specifications for the improvements set forth in this section for approval as a condition precedent to the approval of a plat required by sections 711.05, 711.09, and 711.10 of the Revised Code, and may require the actual construction or agreement or assurance of such construction as a condition precedent to the approval required under those sections.

The rules shall not require the alteration of plans and specifications for improvements, as long as the plans and specifications are in accordance with the rules provided for in this section in effect at the time the plat was submitted.

Such rules may provide for the administration thereof by the regulating body or by a city, county, or regional planning commission having platting jurisdiction over the land affected and may provide for the modification thereof in specific cases, where unusual or exceptional factors or conditions require such modifications, by such body or commission.

II. Municipal Planning Commission Must Adopt a Plan in Order to Acquire Extraterritorial Jurisdiction

A municipality has no constitutional authority over the territory outside its boundaries; therefore, a municipality's authority with respect to the platting of subdivisions in the unincorporated area within three miles of the municipal boundaries is limited to that conferred by the above statutes. *Prudential Co-Op. Realty Co. v. City of Youngstown*, 118 Ohio St. 204, 207, 160 N.E. 695, 696 (1928); accord *Kligler v. City of Elyria*, 2 Ohio App. 2d 181, 185, 207 N.E.2d 389, 392 (Lorain County 1965). Thus, in order for a city to acquire jurisdiction with respect to the platting and planning of the three-mile area surrounding the city, R.C. 711.09 requires first that there be a plan and that the plan be adopted by the city planning commission. See *Gates Mills Inv. Co. v. Parks*, 25 Ohio St. 2d 16, 23, 266 N.E.2d 552, 556-57 (1971) (noting that the first paragraph of R.C. 711.09 has "no provision for a city's legislative authority to adopt a subdivision plan, but only for the city planning commission to do so").²

A. Characteristics of a Plan

The plan required by R.C. 711.09 is "a plan for the major streets or thoroughfares and for the parks and other open public grounds." The characteristics of such a plan are described more fully in R.C. 713.02,³ which states:

The planning commission established under section 713.01 of the Revised Code

² The court compared the provisions of R.C. 711.09 that govern cities with the provisions of R.C. 711.09 that govern villages, which do allow a village legislative authority to adopt a plan, but only if the village has no planning commission or platting commissioner. *Gates Mills Inv. Co. v. Parks*, 25 Ohio St. 2d 16, 266 N.E.2d 552 (1971) (syllabus, paragraph one).

³ While R.C. Chapter 711 governs the platting process, R.C. Chapter 713 governs the establishment and duties of the various types of planning commissions that can be involved in the platting process. Thus, the provisions of R.C. Chapters 711 and 713 should be construed together and in a similar fashion. See generally *State v. Leichty*, 68 Ohio St. 3d 37, 39, 623 N.E.2d 48, 50 (1993) ("[i]t is a fundamental rule of statutory construction that statutes relating to the same subject matter should be construed together").

shall make plans and maps of the whole or any portion of the municipal corporation, and of any land outside thereof, which, in the opinion of the commission, is related to the planning of the municipal corporation, and make changes in such plans or maps when it deems it advisable. Such maps or plans shall show the commission's recommendations for the general location, character, and extent of streets, alleys, ways, viaducts, bridges, waterways, waterfronts, subways, boulevards, parkways, parks, playgrounds, aviation fields and other public grounds, ways, and open spaces; the general location of public buildings and other public property; the general location and extent of public utilities and terminals, whether publicly or privately owned or operated, for water, light, sanitation, transportation, communication, power, and other purposes; and the removal, relocation, widening, narrowing, vacating, abandonment, change of use of or extension of such public ways, grounds, open spaces, buildings, property, utilities, or terminals.

Thus the plan required by R.C. 711.09 may be defined, pursuant to R.C. 713.02, as a document or documents comprising maps and text that show a planning commission's recommendations for the general location, character, and extent of public ways, grounds, buildings, and utilities, which document or documents have been formally adopted by the planning commission. *See generally State ex rel. Kearns v. Ohio Power Co.*, 163 Ohio St. 451, 460, 127 N.E.2d 394, 399 (1955) (interpreting the analogous provisions of R.C. 713.25 governing plans of a regional planning commission and stating "planning ... embraces the systematic and orderly development of a community with particular regard for streets, parks, industrial and commercial undertakings, civic beauty and other kindred matters").

These characteristics distinguish a plan from rules authorized pursuant to R.C. 711.09 or 711.101. R.C. 711.09 provides that "[w]henver a city planning commission adopts a plan" with respect to all or part of the three-mile area surrounding the city, the planning commission "may adopt general rules," subject to the approval of the municipal legislative authority pursuant to R.C. 711.132. R.C. 711.101 further provides that "[a]s to land falling within ... the jurisdiction of its planning commission, the legislative authority of a municipal corporation ... may adopt general rules setting standards and requiring and securing the construction of improvements shown on the plats and plans required by ... [R.C.] 711.09." The authority of the city planning commission and city legislative authority to enact such rules governing the three-mile area surrounding the city clearly is conditioned on the adoption of a plan by the city planning commission. Thus, the plan required by R.C. 711.09 is distinct and separate from the rules adopted by a city planning commission and the city legislative authority pursuant to R.C. 711.09 and 711.101. Such rules provide guidance and a means of implementing the plan; they are not the plan itself.

B.The Terms of a Plan or Any Cooperative Agreements May Limit Extent of Municipal Planning Commission's Exclusive Jurisdiction over Three-Mile Area Outside Municipal Limits

A city planning commission acquires exclusive authority to approve plats for the three-mile area surrounding the city by adopting a plan for that area under R.C. 711.09. 1962 Op. Att'y Gen.

No. 3285, p. 704 (syllabus, paragraph two); 1929 Op. Att'y Gen. No. 847, vol. II, p. 1302 (syllabus). However, R.C. 711.09 also expressly provides that a city planning commission may choose to adopt a plan for only part of the three-mile area. Additionally, a city planning commission may enter into a written agreement with a county or regional planning commission to cooperate with respect to the approval of plats in the three-mile area, R.C. 711.10. *See also* 1975 Op. Att'y Gen. No. 75-085 at 2-340. Thus, the precise geographic area subject to the exclusive extraterritorial jurisdiction of a city planning commission must be determined by reference to the plan adopted by the planning commission, and the provisions of any related cooperative agreements that the city planning commission has with a county or regional planning commission.

In answer to your first question, therefore, a plan, as described in R.C. 713.02, that shows by means of maps and narrative the city planning commission's recommendations for the general location, character, and extent of public ways, grounds, buildings, and utilities in all or part of the three-mile area surrounding the city and that has been formally adopted by the city planning commission pursuant to R.C. 711.09, vests the city planning commission with exclusive planning and platting jurisdiction over such area outside the city as is described in the plan, except as may be otherwise provided in a written agreement with a county or regional planning commission under R.C. 711.10.

III. Responsibility For Maintenance of Roads in Unincorporated Territory Under Jurisdiction of Municipal Planning Commission

A. Dedication and Acceptance of Road for Public Use

In order to determine the responsibilities of the board of county commissioners and the county engineer with respect to a road in an unincorporated platted area that is subject to the jurisdiction of a city planning commission, it is first necessary to determine whether the road has become a public road. A road must be properly dedicated and accepted for public use, and thus established as a public road, before any public authority becomes responsible for its maintenance. 1949 Op. Att'y Gen. No. 1209, p. 835 at 837; *see also Adamson v. Wetz*, 69 Ohio Law Abs. 281, 124 N.E.2d 832 (Ct. App. Montgomery County 1952); 1951 Op. Att'y Gen. No. 599, p. 365. R.C. 711.09 expressly states that "[a]pproval of a plat [by a city planning commission] shall not be an acceptance by the public of the dedication of any street, highway, or other way or open space shown upon the plat." Accordingly, a street shown on an approved plat remains under the care and control of the developer until such street is accepted for use as a public way by the appropriate public authority. *See Eggert v. Puleo*, 67 Ohio St. 3d 78, 84, 616 N.E.2d 195, 199 (1993) (considering a street in a platted subdivision inside a municipality).

When a street is dedicated as part of the platting process, acceptance of the street as a public way is governed by R.C. 711.091.⁴ R.C. 711.091 states:

⁴ The other statutory means means by which a tract of land may be dedicated by a private owner and accepted for use as a public road are found at R.C. 5553.31 and R.C. 723.03. R.C. 5553.31 provides that the dedication of a road is accepted by an endorsement of the express approval

The city or village engineer in the case of lands within a city or village, and *the county engineer in the case of lands outside of a city or village*, shall, upon written request by the owner of the land upon which the street has been constructed check the construction and if the engineer finds that such street has been constructed in accordance with the specifications set forth on the approved plat, and that such street is in good repair, then such finding, endorsed on the approved plat, shall constitute an acceptance of the street for public use by the city, village or county as the case may be, provided such street has been theretofore duly dedicated. (Emphasis added.)

R.C. 711.091 provides that roads on lands outside a city are to be inspected by the county engineer, regardless of whether such lands are under the jurisdiction of a city planning commission. Accordingly, pursuant to R.C. 711.091, it is the duty of the county engineer to inspect the roads constructed on land within the three-mile area surrounding the city upon request of the owner, and the engineer's endorsement on the approved plat that the road meets the applicable specifications constitutes an acceptance of the street for public use, "provided such street has been theretofore duly dedicated."⁵

B. Classification of Road Under R.C. 5559.01 and R.C. 5535.01

Once the street has been accepted for public use, the issue of which public entity is responsible for its maintenance can be considered. As discussed previously, municipal authority over territory outside the municipal corporation's boundaries is limited to that provided by statute.

and acceptance of the board of county commissioners on a plat showing the road to be dedicated. R.C. 723.03 provides that a municipality may accept a dedication of a street inside the corporate limits by an ordinance specially passed for that purpose. When a road is dedicated and accepted as provided in the platting statutes, a formal acceptance by the county or municipality under R.C. 5553.31 or R.C. 723.03 is not necessary. *See Eggert v. Puleo*, 67 Ohio St. 3d 78, 84, 616 N.E.2d 195, 200 (1993) ("R.C. Chapter 711 contemplates creation of a street through the platting process, a separate type of dedication from that provided in R.C. 723.03"). Although the court in *Eggert* considered only the relationship between R.C. 723.03 and R.C. 711.091, the reasoning used by the court is equally applicable to the relationship between R.C. 5553.31 and R.C. 711.091. *See also* 1949 Op. Att'y Gen. No. 1209, p. 835 (syllabus, paragraph one).

Other methods by which a road can be established as a public road include statutory appropriation, common law dedication, and prescription. *See generally* 1988 Op. Att'y Gen. No. 88-080 at 2-396 and 2-397; 1987 Op. Att'y Gen. No. 87-046.

⁵ The dedication to public use must be expressly indicated on the plat. *See, e.g., Beauchamp v. Hamilton Township Trustees*, No. 93-APE09-1331, 1994 Ohio App. LEXIS 1877 (Franklin County May 5, 1994) (slip opinion) (language on plat that easements were "reserved ... for the construction, operation and maintenance of public utilities" did not constitute dedication to public use for purposes of R.C. 711.091).

Prudential Co-Op. Realty, 118 Ohio St. at 207, 160 N.E. at 696. No provision in R.C. Chapter 711 provides that a municipality is responsible for maintenance of streets in the three-mile area surrounding a city by virtue of having exercised its extraterritorial powers pursuant to R.C. 711.09 and R.C. 711.101. Similarly, R.C. 723.01, which provides that a municipality is responsible for maintenance of public ways within the corporate limits, contains no provision governing streets outside the city. *See generally* 1951 Op. No. 599 at 366-67. More important, R.C. 5559.01 states:

Whenever any territory outside the limits of a municipal corporation having a planning commission or a platting commissioner, and within three miles of the corporation limits of such municipal corporation, has been platted into building lots and the plan of the streets approved by such commission or commissioner, and the plat of such addition has been regularly filed in the office of the county recorder, all streets in the newly platted territory shall be under the control and supervision of the board of county commissioners. The board may expend each year on the maintenance of the streets in such territory, until such time as the streets have been permanently improved or the territory has become a part of a municipal corporation, a sum equal to not more than fifty per cent of the moneys levied or collected during the year as taxes from such territory, for road or highway purposes.

Thus, pursuant to R.C. 5559.01, the streets in a platted subdivision in the three-mile area surrounding a city that is subject to the jurisdiction of the a city planning commission are "under the control and supervision of the board of county commissioners."

Responsibility for the actual maintenance of roads outside municipal limits, however, is not determined solely by R.C. 5559.01, but depends additionally on how the road is classified under R.C. 5535.01. 1951 Op. No. 599; 1949 Op. No. 1209; 1928 Op. Att'y Gen. No. 2681, vol. III, p. 2286. R.C. 5535.01 divides the public highways of the state into three classes: 1) state roads, 2) county roads, and 3) township roads. State roads are roads on the state highway system, R.C. 5535.01(A), and must be maintained by the state. Pursuant to R.C. 5535.01(B), the board of county commissioners must maintain county roads, which are roads established as part of the county highway system pursuant to R.C. 5541.01-.03. All public highways located in unincorporated territory other than state or county roads are township roads and must be maintained by the township. R.C. 5535.01(C). Thus, while R.C. 5559.01 brings streets in the platted area within the three-mile area surrounding a city under the control and supervision of the board of county commissioners, it does not establish these streets as county roads for purposes of R.C. 5535.01. *Robinson v. Swing*, 70 Ohio App. 83, 36 N.E.2d 880 (Hamilton County 1939); 1951 Op. No. 599 at 367. Such streets are township roads unless the board of county commissioners takes affirmative action to incorporate them into the county highway system pursuant to R.C. 5541.01-.03 or the state incorporates them into the state highway system. If the road is a township road, the township must maintain it, and the board of county commissioners has discretionary authority pursuant to R.C. 5535.01(C) and R.C. 5559.01 to assist the township with that maintenance. *See* 1951 Op. No. 599 (syllabus, paragraphs one and two); 1949 Op. No. 1209 (syllabus, paragraph two); 1928 Op. No. 2681 at 2288. Conversely, if the county establishes any of the streets as part of the county highway system, the county is responsible for their maintenance. The duties of a county engineer, as

described in R.C. 315.08 or other applicable statutes, will be the same with respect to the maintenance of these streets as for any other county or township road. *See generally* 1990 Op. Att'y Gen. No. 90-024. The fact that the county did not participate in approval of the plat, or in developing the specifications of the roads therein, is not relevant in determining the status of the streets for maintenance purposes.

IV. Conclusion

It is, therefore, my opinion, and you are hereby advised that:

1. A plan that, as described in R.C. 713.02, shows by means of maps and narrative a city planning commission's recommendations for the general location, character, and extent of public ways, grounds, buildings and utilities in all or part of the unincorporated territory within three miles of the corporate limits of the city, and that has been formally adopted by the city planning commission pursuant to R.C. 711.09, vests the city planning commission with exclusive planning and platting jurisdiction over such area outside the city as is described in the plan, except as may be otherwise provided in a written agreement with a county or regional planning commission under R.C. 711.10.
2. When a city planning commission has adopted a plan for the unincorporated territory within three miles of the corporate limits of the city and approved the plat of a subdivision therein, as provided in R.C. 711.09, and when, pursuant to R.C. 711.091, streets dedicated in that plat have been properly accepted for public use, R.C. 5559.01 and R.C. 5535.01(B) provide that the board of county commissioners is responsible for maintenance of such streets once the board of county commissioners establishes such streets as part of the county highway system as provided in R.C. 5541.01-.03.
3. When a city planning commission has adopted a plan for the unincorporated territory within three miles of the corporate limits of the city and approved the plat of a subdivision therein, as provided in R.C. 711.09, and when, pursuant to R.C. 711.091, streets dedicated upon that plat have been properly accepted for public use but no additional action has been taken to establish such streets as state or county roads, R.C. 5559.01 and R.C. 5535.01(C) provide that the township in which the streets are located is responsible for their maintenance.

Respectfully,

LEE FISHER
Attorney General

June 9, 1994

The Honorable Richard G. Ward
Ross County Prosecuting Attorney
20 South Paint Street
Chillicothe, Ohio 45601

SYLLABUS:

94-036

1. A plan that, as described in R.C. 713.02, shows by means of maps and narrative a city planning commission's recommendations for the general location, character, and extent of public ways, grounds, buildings and utilities in all or part of the unincorporated territory within three miles of the corporate limits of the city, and that has been formally adopted by the city planning commission pursuant to R.C. 711.09, vests the city planning commission with exclusive planning and platting jurisdiction over such area outside the city as is described in the plan, except as may be otherwise provided in a written agreement with a county or regional planning commission under R.C. 711.10.
2. When a city planning commission has adopted a plan for the unincorporated territory within three miles of the corporate limits of the city and approved the plat of a subdivision therein, as provided in R.C. 711.09, and when, pursuant to R.C. 711.091, streets dedicated in that plat have been properly accepted for public use, R.C. 5559.01 and R.C. 5535.01(B) provide that the board of county commissioners is responsible for maintenance of such streets once the board of county commissioners establishes such streets as part of the county highway system as provided in R.C. 5541.01-.03.
3. When a city planning commission has adopted a plan for the unincorporated territory within three miles of the corporate limits of the city and approved the plat of a subdivision therein, as provided in R.C. 711.09, and when, pursuant to R.C. 711.091, streets dedicated upon that plat have been properly accepted for public use but no additional action has been taken to establish such streets as state or county roads, R.C. 5559.01 and R.C. 5535.01(C) provide that the township in which the streets are located is responsible for their maintenance.