

February 9, 1998

OPINION NO. 98-011

The Honorable William R. Swigart
Fulton County Prosecuting Attorney
123 Courthouse Plaza
Wauseon, Ohio 43567

Dear Prosecutor Swigart:

We are in receipt of your request for a formal opinion regarding the meaning of the term "subdivision." Specifically, you ask whether the definition of "[s]ubdivision" in R.C. 711.001(B)(1) includes the division of land into parcels that each contain more than five acres, when some of the new parcels do not abut preexisting streets or roads, but rely instead on new easements across neighboring parcels for access to such streets or roads.

R.C. 711.001 sets out the governing definitions for R.C. Chapter 711, which pertains to the regulation of land division in Ohio. The meaning of the term "subdivision" is important because the subdivision and platting provisions of R.C. Chapter 711, and local regulations adopted thereunder, are applicable only to a division of land that first qualifies as a subdivision. See 1997 Op. Att'y Gen. No. 97-019 at 2-101; 1986 Op. Att'y Gen. No. 86-093 at 2-530 and 2-531; 1963 Op. Att'y Gen. No. 358, p. 404. R.C. 711.001(B)(1) defines the term "[s]ubdivision" as follows:

The division of any parcel of land shown as a unit or as contiguous units on the last preceding tax roll, into two or more parcels, sites, or lots, any one of which is less than five acres for the purpose, whether immediate or future, of transfer of ownership, provided, however, that the division or partition of land into parcels of more than five acres not involving any new streets or easements of access, and the sale or exchange of parcels between adjoining lot owners, where such sale or exchange does not create additional building sites, shall be exempted.... (Emphasis added.)

R.C. 711.001(B)(1) specifically provides that a division of land into parcels of more than five acres is exempt from the definition of "[s]ubdivision" if it does not involve any new streets or easements of access. The Ohio Supreme Court has recently held that this

language extends to both public and private easements of access. *State ex rel. Spencer v. East Liverpool Planning Comm'n*, 80 Ohio St. 3d 297, 300, 685 N.E.2d 1251, 1254 (1997). Since the division of land you have described involves new easements of access, it is not exempt from the definition of subdivision.

Nonetheless, the question remains whether such a division is actually included in the definition of "[s]ubdivision," because of the discrepancy between the language of the exemption clause and the initial language of R.C. 711.001(B)(1). R.C. 711.001(B)(1) states initially that a "[s]ubdivision" is the division of a parcel into two or more parcels "any one of which is less than five acres." The ambiguity caused by this language was noted by one court, as follows:

While the statute specifically includes subdivisions where any tract is less than five acres and specifically excludes subdivisions where all tracts are over five acres and no new roads or easements are made, the statute is silent on the question of whether it includes subdivisions where all lots are over five acres and new roads or easements are necessary.

Newell v. Rase, No. 1512, 1985 Ohio App. LEXIS 6925 at *2 (Ct. App. Scioto County July 12, 1985). Having raised the question, however, the *Newell* court found that resolution of this ambiguity was unnecessary to determination of the issues before it.

In order to resolve your question, therefore, it is necessary to resort to the rules of statutory construction. It is axiomatic that statutes must be read as a whole, and, when possible, should not be construed in a manner that would render part of a statute meaningless. *Humphrys v. Winous Co.*, 165 Ohio St. 45, 133 N.E.2d 780 (1956) (syllabus, paragraph one). Pursuant to R.C. 1.47(B), it is presumed that, in enacting a statute, the General Assembly intends the entire statute to be effective. *Accord State ex rel. Bohan v. Industrial Comm'n.*, 147 Ohio St. 249, 251, 70 N.E.2d 888, 889 (1946) ("it is the duty of courts to accord meaning to each word of a legislative enactment if it is reasonably possible so to do. It is to be presumed that each word in a statute was placed there for a purpose").

The initial element of a statutorily defined subdivision requires a division of land into two or more parcels, sites, or lots.¹ The subsequent phrase, "any one of which is less than five acres," can be read either as a limitation or as a descriptive phrase. If the phrase is read as a limitation, no division of land where all the parcels exceed five acres would qualify as a subdivision. Under this reading, it is unnecessary and meaningless to add an exemption for divisions into parcels that exceed five acres and have no new streets or easements. The purpose of an exemption is to "restrain or except that which would

¹ The contiguous unit requirement, which also appears in the initial clause of the definition, is not at issue in your request and will not be discussed in this opinion. There is an extensive discussion of this requirement in 1997 Op. Att'y Gen. No. 97-019.

otherwise be within the scope of the general language." *Detroit Edison Co. v. Securities & Exchange Comm'n*, 119 F.2d 730, 739 (6th Cir. 1941); see also *Kroff v. Amrhein*, 94 Ohio St. 282, 286, 114 N.E. 267, 268 (1916) (recognizing the rule that an "exclusion clearly made in the exception only emphasizes the inclusion of all other things germane to the statute"); *River Bend Farms, Inc. v. M & P Mo. Levee Dist.*, 324 N.W.2d 460 (Iowa 1982) (exception from a statute indicates legislature's opinion that excepted matter would have been subject to the general provision of the statute, absent such an exception); accord *Black's Law Dictionary* 560 (6th ed. 1990). Thus, the existence of an exemption for such a limited category of divisions involving parcels of more than five acres demonstrates that the General Assembly intended that similar divisions not subject to the exemption should be included in the general definition of "[s]ubdivision."

In order, therefore, to give meaning to the exemption clause and give effect to the intent of the General Assembly in enacting that clause, the phrase, "any one of which is less than five acres," should be read as a descriptive clause, rather than as a limitation on the general definition of subdivision. The phrase does not exclude divisions involving parcels of more than five acres; rather, it identifies, as one discrete category of subdivision, all divisions that involve at least one parcel that is less than five acres. This interpretation gives meaning to both the phrase "any one of which is less than five acres" and to the exemption clause.

In addition to conforming to the rules of statutory construction, this interpretation of R.C. 711.001(B)(1) is consistent with the result reached by the court in *State ex rel. Spencer v. East Liverpool Planning Commission*. That case involved an effort to strike the recording of the plat of a land conveyance on the ground that the conveyance constituted a subdivision that had not been approved by the city planning commission. The planning commission argued that no approval was required because the conveyance was exempt from the definition of subdivision, under R.C. 711.001(B)(1) and the identical city ordinance, as a "division or partition of land into parcels of more than five acres not involving any new streets or easements of access." 80 Ohio St. 3d at 300, 685 N.E.2d at 1254. The court ruled that the planning commission's claim was meritless because new easements were created. *Id.* While the court did not directly address the size of the parcels involved, it is implicit in this ruling that a division involving parcels greater than five acres that involves new streets or easements of access constitutes a "subdivision" for purposes of R.C. 711.001(B). One court of appeals has expressly articulated this understanding of R.C. 711.001(B)(1). See *State ex rel. Gundler v. Teeters*, No. 406, 1981 Ohio App. LEXIS 10137 at *6 (Highland County Sept. 10, 1981) (stating that "because the parcels of land in question are all at least five acres in size, a subdivision is created under R.C. 711.001(B)(1) only if new streets or easements of access are created"); accord 1985 Op. Att'y Gen. No. 85-004 (syllabus, paragraph one).

We note, as a final matter, that your question specifies a situation in which at least some of the new parcels do not have frontage on preexisting streets or roads. Pursuant to R.C. 711.131, it may be possible to have the subdivision of a parcel of land approved

without platting, if the parcel is located along an existing public street and also complies with local regulations and other requirements set out in R.C. 711.131. R.C. 711.131, however, applies only to divisions of land that first qualify as a "[s]ubdivision" under one of the definitions in R.C. 711.001. See 1997 Op. Att'y Gen. No. 97-019 at 2-101; 1963 Op. Att'y Gen. No. 358, p. 404 at 408. The location of a parcel with respect to preexisting streets or roads, while pertinent to the applicability of R.C. 711.131, has no bearing on whether the division is a "[s]ubdivision," as defined by R.C. 711.001(B)(1) and, thereby, subject to the provisions of R.C. Chapter 711 and local regulations promulgated thereunder.

It is, therefore, my opinion, and you are hereby advised that when the division of any parcel of land into parcels, sites, or lots of more than five acres involves new streets or easements of access, public or private, such division constitutes a "[s]ubdivision" as defined in R.C. 711.001(B).

Respectfully,

BETTY D. MONTGOMERY
Attorney General

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Fulton County Prosecuting Attorney
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Wauseon, Ohio 43567

SYLLABUS:

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