

OPINION NO. 93-060**Syllabus:**

R.C. 4733.18(B)(4) does not exempt from the registration requirements of R.C. Chapter 4733, concerning the practice of surveying, a person who prepares a plat of a subdivision of his own property for submission to a county planning commission for approval under R.C. 711.10.

To: Robert N. Rosenberger, Pike County Prosecuting Attorney, Waverly, Ohio
By: Lee Fisher, Attorney General, December 20, 1993

You have requested an opinion concerning the preparation of "surveys" of real property by an individual who is not a registered surveyor. A member of your staff indicates that your concern arises from the following situation: a property owner who is not a registered surveyor plans to subdivide his property. Such property is not located within a municipality. The property owner also intends to prepare a plat of the subdivision for submission to the county planning commission for approval, as required by R.C. 711.10.¹

¹ R.C. 711.10 states in pertinent part:

Whenever a county planning commission... adopts a plan for the major streets or highways of the county..., then *no plat of a subdivision* of land within the county..., other than land within a municipal corporation or land within three

Platting Requirements of R.C. Chapter 711

R.C. Chapter 711 establishes various requirements for the platting of real property.² R.C. 711.01 states:

Any person may lay out a village, or subdivision or addition to a municipal corporation, by causing the territory to be surveyed, and *by having a plat of it made by a competent surveyor*. The plat shall particularly describe the streets, alleys, commons, or public grounds, and all in-lots, out-lots, fractional-lots, within or adjacent to such village. The description shall include the courses, boundaries, and extent. (Emphasis added.)

Upon completion of a plat, prepared in accordance with R.C. 711.03, it "shall be *certified by the surveyor* and acknowledged by the owner...." R.C. 711.04 (emphasis added).

The question arises, therefore, as to whether the platting requirements of R.C. Chapter 711 are satisfied where a person who is not a registered surveyor prepares a plat of a subdivision of his own property, located outside of a municipality, to be submitted to a county planning commission for approval under R.C. 711.10. In order to answer this question, it is necessary to examine the provisions of R.C. Chapter 4733 concerning the practice of professional surveying. See *State ex rel. Pratt v. Weygandt*, 164 Ohio St. 463, 132 N.E.2d 191 (1956) (syllabus, paragraph two) ("[s]tatutes relating to the same matter or subject, although passed at different times and making no reference to each other, are *in pari materia* and should be read together to ascertain and effectuate if possible the legislative intent").

Registration of Professional Surveyors

Within R.C. Chapter 4733, the General Assembly has established a statutory scheme of registration to assure the competency of persons seeking to practice the profession of surveying.³

miles of a city or one and one-half miles of a village as provided in [R.C. 711.09], *shall be recorded* until it is approved by the county... planning commission and the approval is endorsed in writing on the plat. (Emphasis added.)

² R.C. 711.40 states that, unless required by local rules or regulations adopted under R.C. 711.05, .09, or .10, the provisions of R.C. 711.01-.39 "shall not apply to the division of any parcel of land by an instrument of conveyance."

³ For purposes of R.C. Chapter 4733, the practice of surveying is defined as:

that branch of engineering which includes any professional service which requires the application of special knowledge of the principles of mathematics, the related physical and applied sciences, and the relevant requirements of law for the adequate performance of the art of surveying, including, but not limited to, measuring the area of any portion of the earth's surface, the lengths and directions of the bounding lines, and the contour of the surface, *for their correct determination and description and for conveyancing for recording, or for the establishment or re-establishment of land boundaries and the platting of lands and subdivisions*; and like measurements and operations involved in the surveying of mines, commonly known as "mine surveying."

R.C. 4733.01(F) (emphasis added). See generally 13 Ohio Admin. Code 4733-31-01 (defining the term "land surveying").

R.C. 4733.11 establishes a number of requirements for registration as a professional surveyor, concerning, among other things, the applicant's education, experience, and, with certain exceptions, successful completion of an examination under R.C. 4733.13. The examination is specifically designed to test the applicant's "knowledge and ability to perform surveying services which affect the safety of life, health and property, except as otherwise provided in [R.C. 4733.11(B)(3)]." R.C. 4733.13(C). R.C. 4733.14 provides for the issuance of a certificate of registration as a professional surveyor, upon payment of the required fee, to any applicant who meets the requirements of R.C. 4733.01-.23. See generally R.C. 4733.99 (establishing penalty for violation of R.C. 4733.22, which prohibits, among other things, the practice of surveying without being registered or exempted from registration in accordance with R.C. 4733.01-.23).

Preparation of Plat Constitutes Surveying

Expressly included in the definition of surveying is the professional service of measuring the area of any portion of the earth's surface, and the lengths and directions of the bounding lines, for their correct determination and description and for conveyancing for recording, and for the *platting of lands and subdivisions*. R.C. 4733.01(F). In order to survey property for the preparation of a plat of a subdivision, one must, therefore, comply with the portions of R.C. Chapter 4733 governing the registration of persons who practice surveying.

Exemption from Registration - R.C. 4733.18(B)(4)

Because your question concerns a situation where a person seeks to survey and plat real property that he personally owns, however, it is necessary to examine the provisions of R.C. 4733.18(B), which exempt certain persons from the registration requirements of R.C. 4733.01-.21. In particular, R.C. 4733.18(B)(4) states:

This chapter does not require registration for the purpose of practicing professional engineering, or professional surveying by an individual, firm, or corporation on property owned or leased by said individual, firm, or corporation *unless the same involves the public welfare or the safeguarding of life, health, or property* or for the performance of engineering or surveying which relates solely to the design or fabrication of manufactured products. (Emphasis added.)

Thus, R.C. 4733.18(B)(4) establishes a limited exception from the registration requirements imposed upon persons who intend to practice surveying. Pursuant to this provision, where a person surveys property that he owns, nothing in R.C. Chapter 4733 requires that person to be registered, *unless*, among other things, such surveying involves the public welfare, or the safeguarding of life, health, or property.

Exemption of R.C. 4733.18(B)(4) Does Not Apply to Preparer of Plat for Purposes of R.C. Chapter 711

In the situation you describe, the property owner plans to survey the property for the purpose of preparing a subdivision plat that is to be submitted for approval to a county planning commission under R.C. 711.10. The purpose for which such plats are reviewed by the planning commission is set forth in R.C. 711.10, stating in part:

Any such county... planning commission shall adopt general rules, of uniform application, governing plats and subdivisions of land falling within its jurisdiction, to secure and provide for the proper arrangement of streets or other highways in relation to existing or planned streets or highways or to the county...

plan, for *adequate and convenient open spaces for traffic, utilities, access of fire fighting apparatus, recreation, light, air, and for the avoidance of congestion of population...* The rules may require the county department of health to review and comment on a plat before the county... planning commission 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. (Emphasis added.)

Further, in *Beechler v. Winkel*, 59 Ohio App. 2d 65, 72-73, 392 N.E.2d 889, 894 (Erie County 1978), the court discussed the effect of recording a plat, stating:

[A] purchaser is entitled to rely on a recorded plat. When an owner records a plat subdividing his land, showing streets or other public areas, followed by the selling of lots with a reference thereto, the new owners acquire a private easement in these streets and the owner is estopped to deny the right of the grantee to the use of said street and to all of the benefits contained in said plat....

....
[F]iling a subdivision plat which shows streets or public areas, and selling lots in reference to the plat, creates easements and rights in the private owners, even if there is not a public dedication later; the private owners have rights separate from the rights of the general public.

The accurate preparation of a plat submitted for approval under R.C. 711.10 is, therefore, essential to the safeguarding of life, health, and property, as well as the public welfare. Thus, 4733.18(B)(4) does not apply to an individual who surveys his own property for purposes of preparing a plat for submission to a county planning commission under R.C. 711.10.

Conclusion

Based on the foregoing, it is my opinion, and you are hereby advised, that R.C. 4733.18(B)(4) does not exempt from the registration requirements of R.C. Chapter 4733, concerning the practice of surveying, a person who prepares a plat of a subdivision of his own property for submission to a county planning commission for approval under R.C. 711.10.