January 8, 1997

OPINION NO. 97-007

The Honorable Jonathan P. Hein
Darke County Prosecuting Attorney
Courthouse
Greenville, Ohio 45331

Dear Prosecutor Hein:

I have before me your opinion request in which you ask:

1.Pursuant to R.C. 711.10, is the approval of a county planning commission required where, prior to the formation of the county planning commission, a board of county commissioners had approved the plat pursuant to [R.C. 711.041], but said plat had never been submitted for recording?

2.Is either a certificate of transfer or an unrecorded land installment contract an instrument of conveyance under R.C. 711.40 capable of creating a "subdivision" as defined in R.C. 711.001?

3.May a plat as described in the first question now be recorded where it appears to otherwise comply with R.C. 711.04 excepting a lack of an acknowledgment by the "owner," or may such acknowledgment now be added by the current owner?

Your questions arise out of a situation in which a person, who is now deceased, owned a large parcel of land. In 1965 the owner had a registered surveyor prepare a plat of a small portion (less than five acres) of the land. The plat was approved at that time by the board of county commissioners and by the health commissioner, but was never recorded with the county recorder. At some point, the property owner entered into land installment contracts for the sale of both portions of his property, but neither contract was ever recorded. The property owner then died. At about the same time, the county organized a county planning commission which adopted its own regulations in accordance with R.C. 711.10. These regulations prohibit creation of a subdivision by plat or instrument of conveyance describing the property by metes and bounds, absent prior approval by the planning commission.

After formation of the county planning commission and adoption of the commission's regulations, the probate court issued to the decedent's surviving spouse two certificates of transfer describing the property by metes and bounds description. One certificate listed the small portion of land that had been platted in 1965; the other certificate listed the remaining acreage of the original tract of land. The certificates of transfer were recorded, but, according to your letter, "the division of the entire parcel has never been recognized by the Darke County Auditor's Office by the assignment of separate parcel numbers pursuant to R.C. 711.104; and for all times pertinent the property was listed on the tax duplicate as a single ... parcel." The surviving spouse, who currently owns both portions of the property, now wishes to record the previously prepared plat, without submitting it to the county planning commission for approval, and then transfer one or both portions of the property. While it is beyond the scope of an opinion of the Attorney General to determine the nature or effect of the particular documents you describe, *see* 1990 Op. Att'y Gen. No. 90-111; 1983 Op. Att'y Gen. No. 83-087, I am able to advise you concerning the operation of the law generally with respect to the types of transactions about which you ask. I caution, therefore, that I am expressing no opinion as to the validity or effect of the specific documents and transactions you describe.

In order to answer your questions, it is first necessary to examine various portions of R.C. Chapter 711 concerning the platting of certain property and the function of a county planning commission with regard to such platting. R.C. Chapter 711 establishes a number of requirements with respect to the recording and approval of plats[1] and various other instruments. For example, in laying out a village, subdivision, or addition to a municipality, a person must have a plat prepared by a competent surveyor. R.C. 711.01. R.C. 711.01-.04 govern the contents of a plat, the manner of performing the survey set forth in the plat, and certification and acknowledgement of the plat. R.C. 711.10 provides for the approval of a plat by the appropriate planning commission prior to recording. Pursuant to R.C. 711.121, the county recorder and county auditor "shall not transfer property or record deeds or leases which attempt to convey property contrary to the provisions of [R.C. Chapter 711]." R.C. 711.12 establishes civil penalties to which a county recorder is subject for the recording of a plat contrary to the provisions of R.C. 711.01-.38. R.C. 711.13 also provides, in part, for the forfeiture of money by any owner or agent of an owner who "willfully transfers any lot, parcel, or tract of such land from or in accordance with a plat of a subdivision ... before the plat has been recorded in the office of the county recorder." *See also* R.C. 711.15 (forfeiture for disposal of, offering for sale, or leasing for a period exceeding five years, "any lot, or any part of a lot in a subdivision with intent to violate [R.C. 711.001-.14]"). R.C. Chapter 711 also creates specific exceptions to certain of its provisions. *See, e.g.*, R.C. 711.131; R.C. 711.151(exception from the requirements of R.C. 711.001-.15 for "conveyances executed and delivered prior to October 16, 1953" and "conveyances made in performance of executory contracts existing prior to October 16, 1953"); R.C. 711.40 (exception for subdivisions created by instruments of conveyance).

Your first question asks whether a property owner who now wishes to record a previously unrecorded plat of property within a township must first obtain approval of the plat by the county

---

[1] As used in R.C. 711.001-.38, a "plat" is "a map of a tract or parcel of land." R.C. 711.001(A).

planning commission, even though the plat was approved, but not recorded, by the county commissioners and health commissioner at a time prior to the formation of the county planning commission.[2] In answering this question, I will limit my discussion to the necessity of having a plat approved by a county planning commission before recording, and will not address the circumstances in which it is necessary to prepare a plat.

The powers and duties of a county planning commission are set forth in R.C. 711.10, which 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 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.... A county ... planning commission shall not require a person submitting the plat to alter the plat or any part of it as a condition for approval, as long as the plat is in accordance with the general rules governing plats and subdivisions of land, adopted by the commission as provided in this section, in effect at the time the plat was submitted....
>
> 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 or regional 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. (Emphasis added.)

See generally R.C. 711.001(B) (defining "subdivision"). Thus, pursuant to R.C. 711.10, once a county planning commission has been established and has adopted a plan for the major streets or highways of the county, no plat of a subdivision within the region, "other than land within a municipal corporation or land within three miles of a city or one and one-half miles of a village as provided in [R.C. 711.09]," may be recorded without prior approval of the county planning commission, shown by the written endorsement of the commission on the plat. *See generally* 1995 Op. Att'y Gen. No. 95-038. For purposes of answering this question, I will assume that the property you describe is located within the planning commission's jurisdiction, *i.e.*, not within a municipal corporation nor within three miles of a city or one and one-half miles of a village as provided in R.C. 711.09.

---

[2] The plat attached to your opinion request does not reflect the entire tract of land that was subdivided, but only the smaller portion of the property surveyed in 1965. A plat of a subdivision should, however, reflect the entire tract of land that is being subdivided. *See* 1984 Op. Att'y Gen. No. 84-073.

The language of R.C. 711.10 is clear in its requirements, and makes no exceptions for subdivision plats previously approved by other entities. *See generally Columbus-Suburban Coach Lines, Inc. v. PUCO*, 20 Ohio St. 2d 125, 127, 254 N.E.2d 8, 9 (1969) (in determining legislative intent, it is necessary "to give effect to the words used, not to delete words used or to insert words not used"). Had the General Assembly intended to allow recording, without approval of an existing planning commission, of a subdivision plat which, prior to the formation of a planning commission, was approved by a board of county commissioners but not recorded, it could easily have so provided, as it did in R.C. 711.103 for certain plats that received tentative approval of a planning commission prior to June 1, 1953.[3] In fact, R.C. 711.10[4] specifically states that the approval of plats in accordance with R.C. 711.10 "shall be in lieu of any approvals provided for in other sections of the Revised Code." In answer to your first question I conclude, therefore, that, pursuant to R.C. 711.10, where a county planning commission has adopted a plan for the major streets or highways of the county, no plat of a subdivision of property located within the planning commission's jurisdiction, except as provided for in R.C. 711.103, may be recorded without approval and endorsement thereon by the county planning commission.

Your second question asks whether a certificate of transfer or an unrecorded land installment contract is, for purposes of R.C. 711.40, an instrument of conveyance pursuant to which a subdivision of land may be created. R.C. 711.40 states:

> Unless required by rules and regulations adopted pursuant to the provisions of [R.C. 711.05 (county commissioners' rules for approval of plats of land located outside of municipal corporations), R.C. 711.09 (city planning commission's rules for

---

[3] R.C. 711.103 states:

> When, prior to June 1, 1953, a subdivision plat has been tentatively approved by a planning commission, and lots have been transferred from the subdivision by metes and bounds descriptions prior to June 1, 1953, and a registered surveyor certifies on such plat, or copy thereof, that all such transfers are in conformity with the plat as tentatively approved, such plat, or copy thereof, may be recorded by the county recorder, notwithstanding that it has not been subscribed and acknowledged by the proprietor thereof, nor finally approved by the planning commission. The certificate of the planning commission as to the date of tentative approval shall be issued on demand.

[4] R.C. 711.10 states, in pertinent part:

> After a county or regional street or highway plan has been adopted as provided in this section, the approval of plats and subdivisions provided for in this section *shall be in lieu of any approvals provided for in other sections of the Revised Code*, so far as the territory within the approving jurisdiction of the county or regional planning commission, as provided in this section, is concerned. (Emphasis added.)

> approving certain plats), and R.C. 711.10], the provisions of [R.C. 711.01-.39] shall not apply to the division of any parcel of land by an *instrument of conveyance*. (Emphasis added.)

Thus, R.C. 711.40 excepts from the provisions of R.C. Chapter 711, *unless required by local rules or regulations*, the division of a parcel of land by an instrument of conveyance. *See* 1953 Op. Att'y Gen. No. 3285, p. 654 (syllabus, paragraph three) ("[t]he provisions of [R.C. Chapter 711] do not per se require the survey and platting of every _subdivision,_ however created, as such term is defined in [R.C. 711.001]; but such requirement may be established by rules and regulations promulgated under [R.C. 711.05, .09, or .10] in designated local jurisdictions, by the several local authorities enumerated therein"). I note, however, that a county planning commission's requirement that subdivisions created by instruments of conveyance be platted is subject to the exception created by R.C. 711.131.[5]

---

[5] R.C. 711.131 states:

> Notwithstanding the provisions of [R.C. 711.001-.13], a *proposed division of a parcel of land along an existing public street, not involving the opening, widening or extension of any street or road, and involving no more than five lots* after the original tract has been completely subdivided, *may be submitted* to the authority having approving jurisdiction of plats under the provisions of [R.C. 711.05, .09, or .10] *for approval without plat*. If such authority acting through a properly designated representative thereof is satisfied that such proposed division is not contrary to applicable platting, subdividing, or zoning regulations it shall within seven working days after submission approve such proposed division and, on presentation of a conveyance of said parcel, shall stamp the same "approved by (planning authority); no plat required" and have it signed by its clerk, secretary, or other official as may be designated by it. Such planning authority may require the submission of a sketch and such other information as is pertinent to its determination thereunder. (Emphasis added.)

See 1985 Op. Att'y Gen. No. 85-004 (syllabus, paragraph two); 1971 Op. Att'y Gen. No. 71-083; 1953 Op. Att'y Gen. No. 3343, p. 688 (syllabus, paragraph one) ("[w]here a subdivision, as defined in [R.C. 711.001], is created by the conveyance by metes and bounds of a tract less than five acres in extent from a single parcel of land, there is no requirement under the provisions of [R.C. Chapter 711] that such subdivision be platted except as such procedure is required by the terms of a rule promulgated by a local authority as provided in [R.C. 711.05, .09, or .10]; but any such requirement in the rule of a local authority is subject to the exception set out in [R.C. 711.131] in the case of subdivisions which do not involve (1) the opening or alteration of new streets and roads, nor (2) more than five lots"); *see generally* 1964 Op. Att'y Gen. No. 1044, p. 2-194 (overruled, in part, by 1971 Op. Att'y Gen. No. 71-083) (explaining the meaning of the terms "original tract" and "completely subdivided," as those terms are used in R.C. 711.131). Thus, in the situation you describe, although the county planning commission has adopted a rule requiring the platting of subdivisions created by instruments of conveyance, if the subdivision you describe is "along an

As stated in your opinion request, the rules of the Darke County Planning Commission require subdivisions created by instruments of conveyance or otherwise to be approved by the county planning commission. Therefore, whether or not a certificate of transfer or an unrecorded land contract is an instrument of conveyance, if either divides a parcel of land as described in R.C. 711.40, except as provided in R.C. 711.131, such division is subject to approval by the Darke County Planning Commission.

Your third question asks whether a plat that was prepared, certified, and approved by the county commissioners in 1965, but never recorded, may now be recorded where it appears to comply with R.C. 711.04, except for the lack of acknowledgment by the person who owned the property when the plat was prepared, and, if acknowledgement of the plat is necessary, whether such acknowledgment may now be added by the current owner. R.C. 711.04 states:

> After a *plat of a subdivision* is completed, it shall be certified by the surveyor and *acknowledged by the owner* before an officer authorized to take acknowledgement of deeds, which officer shall certify his official act on the plat. If any owner is a nonresident of the state, his agent, authorized by writing, may make such acknowledgment. Such plat, and if the execution is by agent, his written authority, shall thereupon be recorded in the office of the county recorder. (Emphasis added.)

While your question assumes that the "plat" you describe is a "plat of a subdivision," as that phrase is used in R.C. 711.04, I note that the plat you have attached includes only a small portion of the tract of land that was being subdivided, rather than the entire tract. Because the plat does not reflect the entire tract that was subdivided, it does not consitute a "plat of a subdivision" for purposes of R.C. 711.04. *See* note two, *supra.* Thus, whether or not the plat you describe has been acknowledged, it is not a "plat of a subdivision" entitled by R.C. 711.04 to be recorded in the office of the county recorder.

Based on the foregoing, it is my opinion, and you are hereby advised that:

1. Pursuant to R.C. 711.10, where a county planning commission has adopted a plan for the major streets or highways of the county, no plat of a subdivision of property located within the planning commission's jurisdiction, except as provided for in R.C. 711.103, may be recorded without approval and endorsement thereon by the county planning commission.

2. Where a county planning commission has adopted a rule that requires a subdivision created by instrument of conveyance to be platted, R.C. 711.40 does not except a

---

existing public street, not involving the opening, widening or extension of any street or road, and involving no more than five lots after the original tract has been completely subdivided," R.C. 711.131, it may be submitted to the county planning commission for approval without plat.

subdivision so created from the platting requirements of R.C. Chapter 711.

3.A plat, whether or not acknowledged, that does not constitute a plat of a subdivision within the meaning of R.C. 711.04 is not entitled by R.C. 711.04 to be recorded in the office of the county recorder.

Respectfully,

BETTY D. MONTGOMERY
Attorney General

January 8, 1997

The Honorable Jonathan P. Hein
Darke County Prosecuting Attorney
Courthouse
Greenville, Ohio 45331

SYLLABUS: 97-007

1.Pursuant to R.C. 711.10, where a county planning commission has adopted a plan for the major streets or highways of the county, no plat of a subdivision of property located within the planning commission's jurisdiction, except as provided for in R.C. 711.103, may be recorded without approval and endorsement thereon by the county planning commission.

2.Where a county planning commission has adopted a rule that requires a subdivision created by instrument of conveyance to be platted, R.C. 711.40 does not except a subdivision so created from the platting requirements of R.C. Chapter 711.

3.A plat, whether or not acknowledged, that does not constitute a plat of a subdivision within the meaning of R.C. 711.04 is not entitled by R.C. 711.04 to be recorded in the office of the county recorder.