

## OPINION NO. 72-020

**Syllabus:**

1. A regional planning commission has authority to require the submission of a plat for the development of a mobile home park, a planned dwelling group, or a planned shopping center, involving only private streets, and, thereafter, to act upon such plat as the plan of a proposed subdivision.

2. Where court action is necessary to enforce the subdivision regulations of a regional planning commission, the county prosecutor shall institute the action for any violation occurring in the county, and the solicitor of a municipality shall institute the action for any violation occurring in a municipality.

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To: B. Edward Roberts, Marion County Pros. Atty., Marion, Ohio  
By: William J. Brown, Attorney General, March 22, 1972

Your request for an opinion, addressed to my predecessor, reads, in pertinent part as follows:

"The Marion County Regional Planning Commission has experienced considerable difficulties recently over the question of whether Subdivision Regulations are intended, under Ohio Statutes, to apply to mobile home parks. A number of large parks are now under development, and the Regional Planning Commission has been confronted by numerous problems. Presently, a proposal for a group of low cost rental dwelling structures is pending. Therefore, it is apparent that the problem is expanding and needs a solution.

"Therefore, on behalf of the Marion County Regional Planning Commission and as Prosecutor of Marion County, Ohio the following questions are hereby submitted to you for your legal opinion:

"1. Does a Regional Planning Commission have authority to require the submission of a plan for a mobile home park, planned dwelling group or planned shopping center, involving only private streets, and, thereafter, act upon said plan as a subdivision?

"2. Does a County Prosecutor or a City Solicitor have the responsibility of instituting court action to secure enforcement of the Subdivision Regulation?"

Your request calls for an examination of Chapters 711 and 713 of the Revised Code. Whenever the owner of a large, undeveloped, contiguous tract of land desires to subdivide it into lots for the purpose of development, either by selling the lots as units to others, or by improving them for future residential, commercial or industrial use, Chapter 711, supra, requires that he submit a "plat" or map of the proposed "subdivision" which must be approved by the proper city or county authority. In Opinion No. 1044, Opinions of the Attorney General for 1964, my predecessor said that "[t]he purpose of platting under this Chapter [711] is to provide for the co-ordination of streets within a subdivision with existing streets and roads, \* \* \*." See also Opinion No. 71-083, Opinions of the Attorney General for 1971. Chapter 713, supra, deals with the establishment and the duties of city, county and regional planning commissions to which approval of the plats of proposed subdivisions has largely been delegated.

For your convenience, I quote here at some length those portions of Chapters 711 and 713, supra, which appear pertinent to your questions:

Section 711.001, Revised Code

"As used in sections 711.001 to 711.38, inclusive of the Revised Code:

"(A) 'Plat' means a map of a tract or parcel of land.

"(B) 'Subdivision' means:

"(1) 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 \* \* \* lots, \* \* \* for the purpose \* \* \* of transfer of ownership \* \* \*; or

"(2) The improvement of one or more parcels of land for residential, commercial or industrial structures \* \* \* involving the division or allocation of land for the opening, widening or extension of any street or streets, except private streets serving industrial structures; the division or allocation of land as open spaces for common use by owners, occupants or lease holders or as easements for the extension and maintenance of public sewer, water, storm drainage or other public facilities."

Section 713.21, Revised Code

"The planning commission of any municipal corporation or group of municipal corporations, any board of township trustees, and the board of county commissioners of any county in which such municipal corporation or group of municipal corporations is located or of any adjoining county may co-operate in the creation of a regional planning commission, for any region defined as agreed upon by the planning commissions and boards, exclusive of any territory within the limits of a municipal corporation not having a planning commission. \* \* \*

"[t]he regional planning commission may employ engineers, accountants, consultants, and employees as are necessary \* \* \*."

Section 713.23, Revised Code

"(A) The regional \* \* \* planning commission may make studies, maps, plans, recommendations and reports concerning the physical, environmental, social, economic, and governmental characteristics, functions, services, and other aspects of the region \* \* \*. The commission may make such studies, maps, plans, recommendations, and other reports as to areas outside the region \* \* \* concerning the physical, environmental, social, economic, and governmental characteristics, functions, services, and other aspects which affect the development and welfare of the region \* \* \* as a whole or as more than one political unit within the region \* \* \*."

Section 711.10, Revised Code

"Whenever \* \* \* a regional planning commission adopts a plan for the major streets or highways of the \* \* \* region, then no plat of a subdivision of land within such \* \* \* region, other than land within a municipal corporation or land within three miles of a city as provided in section 711.09 of the Revised Code, shall be recorded until it is approved by such \* \* \* regional planning commission and such approval is endorsed in writing on the plat. The approval of the planning commission or the refusal to approve shall be endorsed on the plat within thirty days after the submission of the plat for approval, \* \* \* otherwise such plat is deemed approved, and the certificate of the planning commission as to the date of the submission of the plat for approval and the failure to take action thereon within such time shall be sufficient in lieu of the written endorsement or evidence of approval required by this section. The ground of refusal of approval of any plat submitted, \* \* \* shall be stated upon the record of the commission. Within sixty days after such refusal the person submitting any plat which the \* \* \* regional planning commission refuses to approve may file a petition in the court of common pleas of the proper county and the proceedings thereon shall be governed by the provisions of section 711.09 of the Revised Code as in the case of the refusal of a planning authority to approve a plat."

"Any such \* \* \* regional planning commission shall adopt general rules and regulations, 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. \* \* \*

"\* \* \* [n]o regional planning commission shall adopt any rules or regulations 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 board of county commissioners after a public hearing. \* \* \* After a \* \* \* regional street or highway plan has been adopted as 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 \* \* \* regional planning commission, as provided in this section, is concerned. \* \* \*"

Section 711.101, Revised Code

"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 and regulations 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 and regulations 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, \* \* \*.

"Such rules and regulations 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 said sections.

"Such rules and regulations 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 \* \* \*."

Section 711.102, Revised Code

"Whoever willfully violates any rule or regulation adopted by the legislative authority of a municipal corporation or a board of county commissioners pursuant to

section 711.101 [711.10.1] of the Revised Code or fails to comply with any order issued pursuant thereto, shall forfeit and pay not less than ten nor more than one thousand dollars.

"Such sum may be recovered with costs in a civil action brought in the court of common pleas of the county in which the land lies relative to which such violation occurred, by the legal representative of the village, city or county, in the name of such village, city, or county and for the use thereof."

To summarize briefly the general purport of the above statutes, the owner of undeveloped land who wishes to develop it, either by subdividing it into lots to be sold to individual purchasers, or by improving the entire tract himself for residential, commercial or industrial purposes, must submit a plat of the subdivision showing the portions of the tract which are to be allocated for use as streets, easements, or common open spaces. Where a regional planning commission has been established, the authority to formulate rules and regulations governing the submission of plats in the region and the ultimate approval of such submitted plats has been delegated to the commission. The rules and regulations must provide for a proper arrangement of streets, for adequate open spaces for traffic, utilities, light and air, and for avoidance of congestion of population, and such rules must be approved by the boards of county commissioners in the region. If the regional planning commission refuses to approve a submitted plat, the person submitting it is allowed sixty days within which to petition the court of common pleas for a review of the board's action.

Your first question is whether the development of mobile home parks, planned low cost dwelling groups, or planned shopping centers, all of which involve only private streets, constitute "subdivision," within the meaning of Section 711.001 (B) (2), supra, which defines those subdivisions as to which "plats" must be submitted for approval to the regional planning commission. I think it clear that developments of this nature are "subdivisions" which must be approved by such commission. I gather from your letter that no division of the land into lots for the purpose of transfer of ownership is intended in any of these developments, and they would not, therefore, be controlled by Section 711.001 (B) (1), supra. However, improvement of the parcels is intended by the owners for residential or commercial purposes, involving allocation of land for the opening, widening or extension of streets, and this seems clearly to make them subdivisions within the meaning of Section 711.001 (B) (2), supra. The fact that only private streets are contemplated within the proposed subdivisions is immaterial since subsection (B) (2) specifically excepts from its coverage only developments allocating land for "private streets serving industrial structures," and I understand your letter to say that none of the three types of development with which you are concerned will involve industrial structures. See Opinion No. 398, Opinions of the Attorney General for 1963.

You have made available to my office a copy of the Subdivision Regulations for Marion County and the City of Marion under which the Marion County Regional Planning Commission operates when it considers the plat of a proposed subdivision which has been submitted to it for approval. Those Regulations contain the following provision as to minimum requirements to be met by the proponent of a subdivision:

"SECTION 1.23 MINIMUM REQUIREMENTS

"The provisions of these Regulations shall be held to be minimum requirements. The subdivider is encouraged to observe higher standards than herein specified where conditions indicate they are needed or justified.

"Whenever the provisions of these Regulations are different from the requirements of other lawfully adopted regulations, the more restrictive requirement or higher standard shall prevail.

"The following are examples of such other lawfully adopted regulations, but are not construed to be all inclusive.

"1.231 Zoning Regulations

Where the Marion County Board of Commissioners or a municipality or a township has adopted a zoning ordinance under the provisions of Section 519 or Section 303 of the Revised Code of Ohio, all proposed subdivisions within the area affected shall meet the requirements of said zoning ordinance as well as the provisions of these Regulations.

"1.232 Health and Safety Regulations

Whenever the regulations of the Marion County Board of Health, or of the State Board of Health or the health ordinances of any municipality affect the design or development of a subdivision, such regulations or ordinances shall be observed."

In view of this provision, there should be no question of a conflict between the Subdivision Regulations and either the zoning or the health regulations in effect in Marion County.

Your second question asks whether court action to enforce the Subdivision Regulations of the Marion County Regional Planning Commission should be instituted by the county prosecutor or by the city solicitor. Sections 711.10, 711.101 and 711.102, *supra*, provide that a regional planning commission may adopt rules and Regulations governing plats and subdivisions subject to the approval of the boards of county commissioners and the legislative authorities of the municipalities within the region; and that a violation of any such regulation shall be subject to a civil action for not less than \$10 nor more than \$1000 in the court of common pleas for the county within which the land lies, such action to be brought by the representative of the village, city or county. Although Section 711.102, *supra*, does not specifically say so, I think the only reasonable way to read the statute is that the county prosecutor shall bring the action for any violation that occurs in the county, and the solicitor of a municipality shall represent the municipality for any violation occurring therein.

There are a series of Opinions by my predecessors which hold, in the aggregate, that a regional planning commission is "a semi-autonomous entity having an existence apart from and in a sense independent of the several subdivisions which joined in its creation"; that it is not a "county board," and therefore, is not entitled to the services of the county prosecutor as its legal advisor; but that it is authorized under Section 713.21, *supra*, to employ its own counsel when necessary. Opinion No. 5678, Opinions of the Attorney General for 1955,

Opinion No. 2736, Opinions of the Attorney General for 1958; Opinion No. 2383, Opinions of the Attorney General for 1961, and Opinion No. 1207, Opinions of the Attorney General for 1964. The first and the last of these Opinions did not reach the issue of counsel for the commission; the second and third did so only to the extent of holding that the commission was not entitled to have the county prosecutor act as its legal advisor. None of them took notice of Section 711.102, supra, or referred to its specific mention of the county prosecutor and the city solicitor as the proper officers to bring actions to enforce the regulations. Whatever may be thought of the soundness of those Opinions in some aspects, they are not inconsistent with the present conclusion that enforcement of subdivision regulations is the duty of the prosecutor and the solicitor.

In specific answer to your questions, it is my opinion, and you are so advised, that:

1. A regional planning commission has authority to require the submission of a plat for the development of a mobile home park, a planned dwelling group, or a planned shopping center, involving only private streets, and, thereafter, to act upon such plat as the plan of a proposed subdivision.

2. Where court action is necessary to enforce the subdivision regulations of a regional planning commission, the county prosecutor shall institute the action for any violation occurring in the county, and the solicitor of a municipality shall institute the action for any violation occurring in a municipality.