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1. SUBDIVISION—WHERE CREATED BY CONVEYANCE BY METES AND BOUNDS—TRACT LESS THAN FIVE ACRES IN EXTENT FROM SINGLE PARCEL OF LAND—NO REQUIREMENT SUBDIVISION BE PLATTED EXCEPT BY TERMS OF RULE PROMULGATED BY LOCAL AUTHORITY—ANY SUCH RULE SUBJECT TO EXCEPTION SET OUT IN SECTION 711.131 RC, IN CASE OF SUBDIVISIONS WHICH DO NOT INVOLVE OPENING OR ALTERATION OF NEW STREETS AND ROADS NOR MORE THAN FIVE LOTS—SECTIONS 711.001, 711.05, 711.09, 711.10 RC.
2. PROVISIONS OF HB 629, 100 GA, CHAPTER 711 RC, EFFECTIVE OCTOBER 16, 1953, OPERATE PROSPECTIVELY—NO APPLICATION TO DIVISION OF LAND CREATED BY CONVEYANCE EFFECTED BY EXECUTION AND DELIVERY OF INSTRUMENT OF CONVEYANCE PRIOR TO EFFECTIVE DATE.
3. LEASE FOR TERM OF FIVE YEARS, OPTION TO RENEW FOR FURTHER PERIOD, IS A LEASE “FOR A TIME EXCEEDING FIVE YEARS” AS LANGUAGE IS EMPLOYED IN SECTION 711.15 RC.
4. SECTIONS 711.05, 711.101 RC, AS TO ADOPTION OF “RULES AND REGULATIONS GOVERNING PLATS AND SUBDIVISIONS” AND “RULES AND REGULATIONS SETTING STANDARDS AND REQUIRING AND SECURING THE CONSTRUCTION OF IMPROVEMENTS SHOWN ON PLATS AND PLANS” PERMISSIVE ONLY.
5. BOARD OF COUNTY COMMISSIONERS—MAY PROPERLY DIVIDE TERRITORY UNDER ITS JURISDICTION INTO DISTRICTS—MAY MAKE RULES APPLICABLE WITHIN DIFFERENT DISTRICTS.
6. WHERE BOARD OF COUNTY COMMISSIONERS FAILED TO ESTABLISH MINIMUM STANDARDS FOR PLATS AND SUBDIVISIONS—BOARD WOULD BE WITHOUT AUTHORITY TO WITHHOLD APPROVAL OF ANY PLATS SUBMITTED FOR APPROVAL OR REJECTION.

## SYLLABUS:

1. Where a subdivision, as defined in Section 711.001, Revised Code, 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 Chapter 711, Revised Code, 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 Sections 711.05, 711.09 or 711.10, Revised Code; but any such requirement in the rule of a local authority is subject to the exception set out in Section 711.131, Revised Code, 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.

2. The provisions of House Bill 629, 100th General Assembly, by which certain provisions in Chapter 711., Revised Code, were amended effective October 16, 1953, operate prospectively only and they have no application to a division of land created by a conveyance effected by the execution and delivery of an instrument of conveyance prior to such effective date, even though such instrument is not recorded prior to such date.

3. A lease for a term of five years with an option to renew for a further period is a lease "for a time exceeding five years" as this language is employed in Section 711.15, Revised Code.

4. The provisions in Sections 711.05 and 711.101, Revised Code, relative to the adoption of (1) "rules and regulations governing plats and subdivisions," and (2) "rules and regulations setting standards and requiring and securing the construction of improvements shown on plats and plans," are permissive only.

5. In the adoption of rules and regulations under the provisions of Section 711.05 or Section 711.101, Revised Code, the board of county commissioners may properly divide the territory under their jurisdiction into districts and may make varying rules applicable within different districts, provided such variations are reasonable and non-discriminatory and are reasonably related to the statutory objectives for the attainment of which such rule-making power is conferred.

6. Where a board of county commissioners has failed to establish minimum standards for plats and subdivisions by the exercise of its rule-making power under the provisions of Section 711.05, Revised Code, such board would be without authority to withhold its approval of any plats submitted for approval or rejection under the provisions of Sections 711.04 and 711.05, Revised Code.

Columbus, Ohio, December 22, 1953

Hon. Wray Bevens, Prosecuting Attorney  
Pike County, Waverly, Ohio

Dear Sir:

I have for consideration your inquiries relative to the application of the provisions of Chapter 711., Revised Code, to certain fact situations therein described. For the sake of convenience I am consolidating in one opinion your own and certain other questions recently presented by other prosecuting attorneys. These inquiries are as follows:

*INQUIRY I*

“‘A’ is the owner of a tract of land containing twenty-five acres situate in the Military Survey Land of Pike County, Ohio. The aforesaid twenty-five acres of land is in one survey and appears on the tax duplicate as one entry, and all of the same is one contiguous parcel of land.

“‘A’ conveyed three acres from the aforesaid twenty-five acre tract on August 1, 1953, to ‘B’ by Warranty Deed.

“Pursuant to Section 711.001 et seq. of the Revised Code, I would appreciate it sincerely if you would please forward the answers to the following inquiries:

“(a) Does ‘A’s’ conveyance fall under the category of ‘subdivision’ as defined by Section 711.001, thus making it necessary to require platting?

“(b) If the answer to (a) is yes, is ‘A’ required to plat the entire twenty-five acre tract of land owned by him?

“(c) Is ‘A’ required to plat only the three acre parcel of land being conveyed?

“(d) In view of the fact the conveyance was made, executed and delivered prior to the effective date of Section 711.001, will ‘A’ or ‘B’ be required to comply with Section 711.001 before said conveyance may be transferred and recorded?

“(e) May the County Auditor transfer or the County Recorder record the foregoing conveyance of three acres until the same has been platted and approved by the County Commissioners and properly transferred and recorded as the law provides for transferring and recording plats?”

*INQUIRY II*

“‘A’ is the owner of 202 acres situated in the Congress Lands of Pike County, Ohio. All of this land is contiguous and adjacent to each other and bounded by a common line circumscribing the entirety of it. Portions of this land presently appear on the tax duplicate in quantities ranging from 80 acres down to 2 acres.

“‘A’ is desirous of selling 90 acres out of the aforesaid 202 acre boundary of land. When the 90 acres have been properly circumscribed, it appears that there will be transferred from parcels of land appearing on the tax duplicate quantities less than 5 acres.

“Pursuant to Section 711.001 et seq. of the Revised Code, I would sincerely appreciate if you would please forward to me the answers to the following inquiries:

“(a) Is ‘A’ required to plat the entire farm of 202 acres?

“(b) Is ‘A’ required to plat the 90 acres being sold?

“(c) Is ‘A’ required to plat the parcels of land contained within the 90 acre boundary which will be removed from the tax duplicate in quantities of less than 5 acres?”

“(d) May the County Auditor transfer and the County Recorder record the foregoing conveyance of 90 acres until the same has been platted and approved by the county commissioners and properly transferred and recorded as the law provides for transferring and recording plats?”

### INQUIRY III

“‘A’ is the owner of a nine acre tract of land which has not been subdivided or platted as required by Section 711.001 of the Revised Code. This land is situate in the county of Pike and less than three miles from the corporate limits of the Village of Waverly, which has a Planning Commission and has an over-all planning program.

“‘A’ conveyed to ‘B’ a one and one-half acre lot by lease for a term of five years. The lease contained an option to renew for an additional five year term, subject to the same terms and conditions.

“Pursuant to Section 711.15 of the Revised Code, I would appreciate it if you would answer the following inquiries:

“(a) Does a lease for five years with an option to renew for an additional period of time create a lease exceeding five years?”

“(b) Is the Recorder authorized to record said conveyance by reason of the provisions contained in Section 711.15?”

### INQUIRY IV

“I have received a request from the Board of County Commissioners of Jefferson County to write for an opinion from your office on the following questions regarding House Bill No. 629:

“(a) Do the County Commissioners have to adopt minimum standards for the construction of streets and submission of plans and specifications for their approval?”

“(b) Do the County Commissioners have discretion to approve and to make one rule for one part of the county, to another part of the county?”

“(c) Do the County Commissioners have to establish certain rules and regulations in the county under House Bill No. 629?”

“(d) Do the County Commissioners have to use their own judgment or follow a minimum standard?”

Certain of the questions thus presented would appear to have been

disposed of by the conclusions reached in my opinion No. 3285, dated November 27, 1953, the syllabus in which is as follows:

"1. A 'subdivision,' as defined in Section 711.001, Revised Code, may be created either (1) by a conveyance of a part of a single parcel of land whereby either the part conveyed or the part remaining is less than five acres, or (2) by a survey and plat thereof by an owner who elects to 'lay out a village, or subdivision or addition to a municipal corporation' as provided in Section 711.01, Revised Code.

"2. When an owner of land elects to 'lay out a \* \* \* subdivision or addition to a municipal corporation' the provisions of Section 711.01, Revised Code, with respect to a survey and a plat thereof, being merely restatements without substantive change of the prior analogous provisions of Section 3580, General Code, are mandatory on such owner; but the term 'subdivision,' in the context in which it is used in this section, has reference only to such division of land as is involved when an owner thereof elects to 'lay out (an) \* \* \* addition to a municipal corporation' and does not refer to every division of land comprehended by the statutory definition of such term set out in Section 711.001, Revised Code.

"3. The provisions of Chapter 711., Revised Code, do not per se require the survey and platting of every 'subdivision,' however created, as such term is defined in Section 711.001, Revised Code; but such requirement may be established by rules and regulations promulgated under the provisions of Section 711.05, 711.09 or 711.10, Revised Code, in designated local jurisdictions, by the several local authorities enumerated therein.

"4. An attempted conveyance of real property is 'contrary to the provisions of Chapter 711. of the Revised Code' as this language is used in Section 711.121, Revised Code, where such attempted conveyance would create a subdivision, as defined in Section 711.001, Revised Code, (a) where the grantor has failed to comply with a rule, promulgated by a local authority as authorized in Section 711.05, 711.09 or 711.10, Revised Code, by the terms of which rule the making and recording of a plat of such subdivision is required; or (b) where, in violation of Section 711.13, Revised Code, such attempted conveyance is made 'from or in accordance with a plat of a subdivision as specifically defined in this chapter, before such plat has been recorded in the office of the county recorder.'"

#### INQUIRY I

With respect to question (a) in this inquiry, it is clear that although a conveyance of the sort therein described would create a subdivision within the statutory definition of that term no platting would be required

in the absence of a rule of a local authority by which the duty to plat is established.

Moreover, it would appear that no platting is required in this situation for still another reason, i.e., because the conveyance was made on August 1, 1953. Here it is sufficient to note (1) that a conveyance is effected upon delivery of the instrument of conveyance rather than upon the recording of that instrument, and (2) that statutes are presumed to operate prospectively unless a contrary intention is plainly manifest in the enactment. Moreover, in Ohio the General Assembly is without power to enact retroactive laws. See Sec. 28, Article I, Ohio Constitution; 37 Ohio Jurisprudence, 819, et seq., Section 500.

Finally, it is to be noted that the conveyance in this instance would apparently fall within the exception set out in Section 711.131, Revised Code, since it would not involve more than five lots and presumably would involve no new or altered street or road, so that the instrument of conveyance could be approved by the appropriate planning authority for recording without platting.

The conclusion thus reached with respect to question (a) makes it unnecessary to give consideration to the remaining questions in this inquiry.

### *INQUIRY II*

The facts stated in this inquiry are such as to indicate that although the conveyance in question would create one or more subdivisions, as this term is defined in the statute, it would not be sufficient to constitute a conveyance "from or in accordance with a plat," nor to constitute a subdivision as such term is employed in Section 711.01, Revised Code. Accordingly, assuming that platting is not required by rule of a local authority, adopted as provided in Sections 711.05, 711.09 or 711.10, Revised Code, it would follow that no platting would be necessary in this situation.

This conclusion makes it unnecessary, of course, to give further consideration to the several specific questions in this inquiry.

### *INQUIRY III*

The principal question in this inquiry is whether a lease for a five year term containing an option to the lessee to renew for any term con-

stitutes a lease "for a time exceeding five years" as this expression is used in Section 711.15, Revised Code.

Language quite similar to that noted above is found in Section 5301.08, Revised Code, which reads as follows:

"Sections 5301.01 to 5301.45, inclusive, of the Revised Code do not affect the validity of any lease of school or ministerial lands for any term not exceeding ten years or of any other lands for any term not exceeding three years, or require such lease to be attested, acknowledged, or recorded."

This language is substantially identical to that of former Section 8517, General Code, the provisions of which were recently under scrutiny in *Corvington v. Heppert*, 156 Ohio St., 411. The second paragraph of the syllabus in this case is as follows:

"A lease of real property for a specified number of years coupled with an option to extend or renew the same for an additional period gives the lease effect as an original present demise for the full term for which it might be made inclusive, contingent on the election to extend or renew."

In the course of the opinion by Judge Zimmerman, we find this statement, p. 415:

"The investigation we have made indicates that the weight of authority is to the effect that a lease of real property for a specified number of years, coupled with an option to extend or renew the same for an additional period, ordinarily gives the lease effect *as an original present demise for the full term for which it might be made inclusive*, contingent on the election to extend or renew. So, where, in the particular jurisdiction, a statute exists requiring a lease for more than a specified number of years to be recorded to affect others than the parties thereto, a lease which with its extension or renewal period runs beyond such specified time comes within the statute and must be recorded. \* \* \*"

On the authority of this decision, therefore, I am impelled to conclude that the lease described in your inquiry must be considered as one "for a time exceeding five years."

It does not necessarily follow, however, that platting would be required in this instance. It would appear that although a subdivision, as defined by Section 711.001, *supra*, would be created by such conveyance, such subdivision would not constitute one of the sort contemplated in

the language of Section 711.01, Revised Code. Accordingly, platting in this instance would not be required unless such requirement is to be found in the rules of the local authority concerned.

#### INQUIRY IV

Question (a) in this inquiry involves a consideration of the following provision in 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. \* \* \*”

It is thus apparent that rules adopted under authority of this provision may relate to two subjects, i.e., (1) to the setting of standards for the preparation of plats and plans and (2) to requiring and securing the construction of improvements shown thereon. The question at hand relates to the first such subject, and a rule with respect thereto may be readily enforced by the operation of the following provision in Section 711.04, Revised Code:

“No plat certifying lands outside a municipal corporation may be recorded without the approval thereon of the board of county commissioners of the county wherein such lands are situated.”

It will be observed that the provision quoted above from Section 711.101, Revised Code, is to the effect that the commissioners “may adopt” rules setting standards. Although the courts have on occasion recognized that permissive language may be considered to impose a mandatory duty, this is only done where the context clearly indicates a legislative intent that such be done. In the case at hand I perceive nothing in the context in which this provision is found which would justify the view that this language is other than permissive only, especially when it is remembered that provisions of this sort must be strictly construed and ambiguities therein must be resolved in favor of the property owners. I conclude, therefore, that the board of county commissioners are under no duty to adopt rules setting standards, as authorized in Section 711.101, Revised Code, if they should not choose to do so.

All that has been said above with respect to question (a) would be equally applicable to question (c), for the provision in Section 711.05, Revised Code, for the adoption of rules "governing plats and subdivisions" is likewise set out in permissive language.

Question (b) in this inquiry would appear to raise the issue of the power of the commissioners to adopt rules which in effect would be zoning ordinances. Zoning ordinances, by their very nature, contemplate the division of a municipality, or other political subdivision, into districts and the prescription and application of different regulations in each. 58 American Jurisprudence, 940, Section 1. The constitutional validity of reasonable and nondiscriminatory zoning ordinances is well settled by numerous decisions and the question at hand would appear to be rather one of the statutory authority of the board to adopt varying rules for application in different districts, than one of the constitutional validity of such rules.

The objectives to be attained by rules which the board may adopt are stated in Section 711.05 as follows:

*"\* \* \* the board may adopt general rules and regulations governing plats and subdivisions of land falling within its jurisdiction, to secure and provide for the co-ordination of the streets within the subdivision with existing streets and roads or with existing county highways, 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, safety, or welfare but shall not impose a greater minimum lot area than 4800 square feet. \* \* \*"*

These objectives appear to me to be such as to be attainable only in rare instances by rules which would operate uniformly throughout a whole county, for the variation in existing street, utility, traffic and population conditions in and about the several municipalities located in many counties would indubitably present a wide variation of problems. For this reason I conclude that the language here under scrutiny must be deemed to include by implication the authority to provide for the application of varying rules in different districts within a county.

It is assumed that question (d) in this inquiry relates to the action of the commissioners in extending or withholding their approval of plats under the provisions of Sections 711.04 and 711.05, Revised Code, which approval is made a condition of such plats being recorded. The necessity

of such approval before recording has been noted above in the former section, and in the latter we find this provision:

“\* \* \* The ground of refusal to approve any plat, submitted in accordance with section 711.04 of the Revised Code shall be stated upon the record of the board and, within sixty days thereafter, the person submitting any plat which the board refuses to approve may file a petition in the court of common pleas of the county in which the land described in said plat is situated to review the action of such board.”

It would manifestly be impossible to sustain any decision of the board refusing to approve a plat unless it could be shown to have been predicated on a failure to meet a standard of some sort, for it certainly cannot be supposed that the board could act arbitrarily in such matters by making its own rules and standards in each instance so to speak. Accordingly since the statute prescribes no standards for use in such cases, but rather authorizes the board to “adopt general rules and regulations governing plats and subdivisions,” it would appear to follow that unless such standards were thus established by rule the board would not be justified in withholding its approval in any instance of a plat being presented to it. I do not, however, regard this circumstance as sufficient to impose on such board the duty to establish such standards if they should choose not to do so, for, as already pointed out, the adoption of rules under the provisions of this section is plainly discretionary with the board.

Accordingly, in specific answer to the several inquiries above set out, it is my opinion that:

1. Where a subdivision, as defined in Section 711.001, Revised Code, 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 Chapter 711., Revised Code, 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 Section 711.05, 711.09 or 711.10, Revised Code; but any such requirement in the rule of a local authority is subject to the exception set out in Section 711.131, Revised Code, 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.

2. The provisions of House Bill 629, 100th General Assembly, by which certain provisions in Chapter 711., Revised Code, were amended effective October 16, 1953, operate respectively only and they have no ap-

plication to a division of land created by a conveyance effected by the execution and delivery of an instrument of conveyance prior to such effective date, even though such instrument is not recorded prior to such date.

3. A lease for a term of five years with an option to renew for a further period is a lease "for a time exceeding five years" as this language is employed in Section 711.15, Revised Code.

4. The provisions in Section 711.05 and 711.101, Revised Code, relative to the adoption of (1) "rules and regulations governing plats and subdivisions," and (2) "rules and regulations setting standards and requiring and securing the construction of improvements shown on plats and plans," are permissive only.

5. In the adoption of rules and regulations under the provisions of Section 711.05 or Section 711.101, Revised Code, the board of county commissioners may properly divide the territory under their jurisdiction into districts and may make varying rules applicable within different districts, provided such variations are reasonable and nondiscriminatory and are reasonably related to the statutory objective for the attainment of which such rule-making power is conferred.

6. Where a board of county commissioners has failed to establish minimum standards for plats and subdivisions by the exercise of its rule-making power under the provisions of Section 711.05, Revised Code, such board would be without authority to withhold its approval of any plats submitted for approval or rejection under the provisions of Sections 711.04 and 711.05, Revised Code.

Respectively,

C. WILLIAM O'NEILL  
Attorney General