

OPINION NO. 85-004**Syllabus:**

1. An owner who divides a parcel of land into tracts, each of which is greater than five acres in size, is not required to plat such division of land, unless new streets or easements of access are involved, since such division is not a "subdivision" for purposes of R.C. Chapter 711. The owner has no duty to plat such division regardless of whether he subsequently conveys the tracts to persons who further divide such tracts.
2. An owner who, for purposes of transfer of ownership, divides a tract into lots, at least one of which is under five acres, must plat the division of land if there is a local regulation which requires subdivisions created by conveyances to be platted, unless the subdivision falls within the exception of R.C. 711.131.

To: Richard G. Ward, Ross County Prosecuting Attorney, Chillicothe, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, February 13, 1985

I have before me your request for my opinion concerning the platting requirements for subdivisions of land. In your letter of request you state that in Ross County there are "developers who purchase a large tract of land, such as a farm, and then proceed to divide that farm into five [plus] acre tracts. These five-acre tracts are then subsequently sold to other developers who further subdivide each five-acre tract into one-acre building sites." You wish to know whether a developer must comply with the platting requirements of R.C. Chapter 711 and of the local planning authority when he divides a large tract of land into smaller

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tracts, each of which is greater than five acres in size, and then sells these smaller tracts to other developers who in turn further divide each tract into five one-acre building sites. See generally R.C. 711.001(A) (defining "plat" to mean "a map of a tract or parcel of land").

R.C. Chapter 711 governs the platting of subdivisions of land. A subdivision of land which is effected by an instrument of conveyance need not be platted unless the local planning authority adopts a rule which requires the platting of a subdivision created by an instrument of conveyance. See R.C. 711.05; R.C. 711.40; 1953 Op. Att'y Gen. No. 3285, p. 654. See also 1960 Op. Att'y Gen. No. 1921, p. 733; 1953 Op. Att'y Gen. No. 3343, p. 688. It is my understanding that the Ross County Board of County Commissioners has promulgated a rule which requires subdivisions created by instruments of conveyance to be platted.

I turn now to the question whether a developer who purchases a large tract of land and divides the tract into lots greater than five acres in size must plat such division of land. Because the Ross County Board of County Commissioners has promulgated a rule requiring subdivisions created by instruments of conveyance to be platted, it must be determined whether the developer has subdivided the tract of land. R.C. 711.001(B)(1) defines "subdivision" for purposes of R.C. Chapter 711 to mean:

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.)

If a tract is divided into parcels, each of which is greater than five acres, such division is not a "subdivision" for purposes of R.C. Chapter 711 if no new streets or easements of access are involved. Thus, a local planning authority may not require an owner to file a plat for a division of property where every resulting parcel exceeds five acres. See 1963 Op. Att'y Gen. No. 358, p. 404, 405 (concluding that a tract of land which has been divided into lots more than five acres in size has not been "subdivided" as defined in R.C. Chapter 711 and thus need not be platted, stating that R.C. 711.05 empowers county commissioners "to adopt rules and regulations governing plats and subdivisions, but before their rules can apply. . . there must be a 'subdivision' to apply the rules to"). See also 1953 Op. No. 3285 (syllabus, paragraph 1). Therefore a developer who divides a tract of land into parcels, each of which is greater than five acres in size is not required to plat such division of land, unless new streets or easements of access are involved, since such division is not a "subdivision" for purposes of R.C. Chapter 711. The developer has no duty to plat such division regardless of whether he subsequently conveys the tracts to persons who further divide such tracts.

You have set forth in your letter that a developer may divide a large tract of land into smaller parcels, each of which is greater than five acres in size, and subsequently sell these parcels to other developers, who further divide each parcel into tracts, all less than five acres in size. Since this further division of a tract results in the creation of parcels less than five acres in size, it is a "subdivision" as defined in R.C. 711.001(B) (assuming that the division is for the purpose of transfer of ownership), and thus must be platted if there is a rule or regulation of the local planning authority requiring subdivisions created by conveyances to be platted. See 1964 Op. Att'y Gen. No. 64-1044; 1953 Op. No. 3285.

I draw your attention, however, to R.C. 711.131 which provides:

Notwithstanding the provisions of sections 711.001 to 711.13, inclusive, of the Revised Code, 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 section 711.05, 711.09 or 711.10 of the Revised Code 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 hereunder.

Thus, pursuant to R.C. 711.131, a proposed division of a parcel of land which meets the requirements of that section may be submitted to the local planning authority for approval without a plat. See 1953 Op. No. 3343 (a local regulation requiring the platting of a subdivision is subject to the exception set forth in R.C. 711.131). See also 1984 Op. Att'y Gen. No. 84-073; 1971 Op. Att'y Gen. No. 71-083 (where an original lot is divided into five lots, all larger than five acres, so that no subdivision is involved, and subsequently one of the lots is divided further into two lots, one being smaller than five acres, the owner's subsequent division of the fifth lot into two lots, which is a subdivision, comes within the exemption of R.C. 711.131, since only two lots resulted from the subdivision, and thus is not required to be platted); Op. No. 64-1044 at 2-197 (defining, for purposes of R.C. 711.131, an "original tract" as "a contiguous quantity of land held by one person, or in common ownership, which has not been platted by the existing owner or owners," and "completely subdivided" as "a tract that is divided into as many lots as the subdivider intends for the tract"). If an owner divides a parcel of land along an existing street not involving the opening, widening or extension of any street into no more than five lots, such subdivision need not be platted pursuant to R.C. 711.131.

In conclusion, it is my opinion, and you are advised, that:

1. An owner who divides a parcel of land into tracts, each of which is greater than five acres in size, is not required to plat such division of land, unless new streets or easements of access are involved, since such division is not a "subdivision" for purposes of R.C. Chapter 711. The owner has no duty to plat such division regardless of whether he subsequently conveys the tracts to persons who further divide such tracts.
2. An owner who, for purposes of transfer of ownership, divides a tract into lots, at least one of which is under five acres, must plat the division of land if there is a local regulation which requires subdivisions created by conveyances to be platted, unless the subdivision falls within the exception of R.C. 711.131.