

OPINION NO. 71-083**Syllabus:**

1. Where the owner of a tract of land sells a portion thereof to a purchaser under conditions which render this division of the tract exempt from the platting provisions of Chapter 711, Revised Code, and where the purchaser thereafter does subdivide and plat the purchased portion, this does not affect the status of the portion retained by the seller as an unplatted tract.

2. Where the owner of an unplatted tract proposes to convey by instrument a small portion of it which lies along an existing public street, where no opening, widening or extension of any street or road is involved, and where all local platting, zoning and planning regulations have been satisfied, the division of the tract is exempt from the platting provisions of Chapter 711, Revised Code, under the exceptions contained in Sections 711.131 and 711.40, Revised Code.

3. The purpose of the platting provisions is to co-ordinate new streets in a new subdivision with already existing streets, and where a proposed division of an unplatted tract by an instrument of conveyance does not run counter to that purpose, and all local regulations have been satisfied, the division is exempt from platting under Sections 711.131 and 711.40, Revised Code. (Opinion No. 1044, Opinions of the Attorney General for 1964, and Opinion No. 69-161, Opinions of the Attorney General for 1969, overruled, in part.)

To: David D. Dowd, Jr., Stark County Pros. Atty., Canton, Ohio
By: William J. Brown, Attorney General, November 29, 1971

I have your request for an opinion, addressed to my predecessor, in which you raise two questions concerning the application of Chapter 711, Revised Code, to the platting of subdivisions outside a municipal corporation. The facts as set forth in your letter may be summarized as follows:

In 1959 two individuals purchased a single tract of land containing about 121 acres. Out of this acreage, they made the following four conveyances to a corporation: 1963, 14 acres; 1964, 19 acres; 1966, 28 acres; 1969, 44 acres. All of these four tracts were subsequently subdivided and platted by the corporation and the lots were sold. The 1959 purchasers still hold title to about 15 acres of unplatted land out of the original 121 acres, and they now propose to convey a tract of less than one acre, along an existing public street, to two other individuals. Since your letter states that all platting and zoning regulations of Stark County have been satisfied, this division of the remaining 15 acre tract will be exempt from the platting provisions of Chapter 711, supra, if it falls within the exception contained in Section 711.131, Revised Code, infra. The owners, therefore, seek to have the Stark County Regional Planning Commission stamp the conveyances, "approved * * * no plat required", pursuant to the provisions of that Section.

The original owners were exempted from platting the 1963, 1964, 1966 and 1969 conveyances to the corporation, under the exception contained in Section 711.001, Revised Code, infra, since all the parcels involved in those four sales contained more than five acres. One additional conveyance to the corporation in 1964, comprising less than one acre, was also exempt under the exception provided in Section 711.40, Revised Code, infra, since Stark County did not at that time have regulations, as it now does, requiring the platting of any division of land effected by a conveyance.

The questions on which you desire an opinion are stated in your letter as follows:

"The first question we raise is whether the platting of the five tracts of land into lots, four of which tracts, contained more than five acres, by a grantee of these tracts from the original owners of the entire 121 acres should be construed as completely subdividing the original tract of 121 acres within the requirements of Section 711.131 so as to require the platting of any single subsequent conveyance of less than five acres by the original owners.

"The second question of a hypothetical nature, which is important to a solution of future problems, set forth for your consideration is whether a different result would be obtained should the original owner of a single tract of land, having platted an allotment of more than five acres containing five or more lots, be permitted to convey under the provisions of Section 711.131, Revised Code, without a plat a parcel or parcels of land, up to five in number, each one containing under five acres where all the other requirements of the statute have been satisfied.

"This request for your opinion arises from the contention as to the factual situation set forth herein that once a plat of more than five lots has been adopted and recorded, it precludes any subsequent conveyance by the original land owner of a portion of his total acreage which is less than five acres without a further plat, as

the words 'completely divided' under Section 711.131, Revised Code, include the individual lots in the allotment itself."

For convenience of reference, the specific statutes referred to above will be set forth at this point. Section 711.001, supra, provides, in pertinent part, as follows:

"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 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 * * * shall be exempted;

"* * * * *"

section 711.131, supra, provides, in pertinent part, as follows:

"Notwithstanding the provisions of section 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 * * * of any street * * *, 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 * * * for approval without plat. If such authority * * * is satisfied that such proposed division is not contrary to applicable platting, subdividing, or zoning regulations it shall * * * approve such proposed division and, on presentation of a conveyance of said parcel, shall stamp the same 'approved * * * no plat required' * * *."

Section 711.40, supra, provides as follows:

"Unless required by rules and regulations adopted pursuant to the provisions of sections 711.05, 711.09 and 711.10 of the Revised Code, the provisions of sections 711.01 to 711.39, inclusive, of the Revised Code, shall not apply to the division of any parcel of land by an instrument of conveyance."

Your first question is whether the fact, that the tracts conveyed to the corporation in 1963, 1964, 1966 and 1969 were subsequently platted by the corporation, amounts to a complete subdivision of the original tract of 121 acres within the meaning of Section

711.131, supra. I think that this is clearly not the meaning of the term, "original tract", as it is used in that Section, and I agree with the interpretation of my predecessor in Opinion No. 1044, Opinions of the Attorney General for 1964. That Opinion stated:

"* * * I am of the opinion, however, that 'tract' refers to a contiguous quantity of land undivided by lot lines. I further am persuaded that the word 'original' contemplates a tract which has not been divided under its present ownership. An 'original tract' then, under Section 711.131, supra, is a contiguous quantity of land held by one person, or in common ownership, which has not been platted by the existing owner or owners." * * * I cannot infer that original means the initial source of a tract or parcel * * * or that the legislature intended that an original tract be defined by time rather than by its composition or formation. * * * (Emphasis added.)

That Opinion also pointed out 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, * * *" and the definition of the tract to be platted given at the very outset of Chapter 711, supra, seems to me consistent with my predecessor's interpretation of the term "original tract". Section 711.001 (B), Revised Code, defines the tract to be platted as:

"* * * [A]ny parcel of land shown as a unit or as contiguous units on the last preceding tax roll, * * *;

"* * * * * * * * * *"

Such a tax list must, of course, be completed annually by the county auditor on or before the first day of October. Section 319.28, Revised Code. I conclude, therefore, that the "original tract", in the case you have presented, is not the original 121 acres but the 15 contiguous unplatted acres still shown by the latest tax list to be held by the original owners.

The question remains whether the owners' proposal to convey less than one acre (along an existing public street) from their 15 acre tract is exempt from the platting requirements of Chapter 711, supra, under the exception contained in Section 711.131, supra. The exception provided by that Section is expressly allowed regardless of all the prior provisions of Chapter 711, supra, and it applies when a proposed division of a parcel of land - assuming compliance with all local regulations - lies "along an existing public street" and does not involve "the opening, widening or extension of any street or road, * * *." Such an exception is obviously consistent with the purpose for platting, as described by my predecessor in Opinion No. 1044, supra, for, under the circumstances described in Section 711.131, supra, there is no need "to provide for the co-ordination of streets * * * with existing streets and roads, * * *." The further clause of Section 711.131, supra, "involving no more than five lots after the original tract has been completely subdivided", applies only to the necessity for replatting to accomplish changes in an already subdivided tract. It has no application here since the 15 acre tract has never been subdivided. I conclude, therefore, that the owners' proposal to sell less than one acre, along an existing public street, comes within the exception of Section 711.131, supra, and is exempt

from platting requirements. It should also be noted that this proposal comes within the exception provided by Section 711.40, *supra*, since it will be a division by conveyance and since, as you state, all local regulations have been satisfied.

Your second question can be answered on the basis of what has already been said. Since the purpose of platting is to co-ordinate new streets in a new subdivision with already existing streets, an owner may convey any unplatted portion of his tract without the necessity of a plat, so long as such portion lies along an existing public street, no opening, widening or extension of any existing street is involved, and all local platting, zoning and planning requirements have been satisfied.

The views expressed above are consistent with those of my predecessor in Opinion No. 1044, *supra*, with the exception of his response to the seventh question in that Opinion which, I believe, misreads the effect of the clause in Section 711.131, *supra*, "involving no more than five lots after the original tract has been completely subdivided". The same misconception appears in Opinion No. 69-161, Opinions of the Attorney General for 1969.

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

1. Where the owner of a tract of land sells a portion thereof to a purchaser under conditions which render this division of the tract exempt from the platting provisions of Chapter 711, Revised Code, and where the purchaser thereafter does subdivide and plat the purchased portion, this does not affect the status of the portion retained by the seller as an unplatted tract.

2. Where the owner of an unplatted tract proposes to convey by instrument a small portion of it which lies along an existing public street, where no opening, widening or extension of any street or road is involved, and where all local platting, zoning and planning regulations have been satisfied, the division of the tract is exempt from the platting provisions of Chapter 711, Revised Code, under the exceptions contained in Sections 711.131 and 711.40, Revised Code.

3. The purpose of the platting provisions is to co-ordinate new streets in a new subdivision with already existing streets, and where a proposed division of an unplatted tract by an instrument of conveyance does not run counter to that purpose, and all local regulations have been satisfied, the division is exempt from platting under Sections 711.131 and 711.40, Revised Code. (Opinion No. 1044, Opinions of the Attorney General for 1964, and Opinion No. 69-161, Opinions of the Attorney General for 1969, overruled, in part.)