

OPINION NO. 84-073**Syllabus:**

Where an owner, for purposes of transfer of ownership, divides a tract of land into five lots, where at least one lot is under five acres, and then further subdivides one of the lots into two or more parcels where at least one parcel is under five acres, the entire tract must be platted if there is a local regulation which requires subdivisions created by conveyances to be platted.

To: Gregory W. Happ, Medina County Prosecuting Attorney, Medina, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, November 28, 1984

I have before me your request for my opinion as to whether "a 5 acre plus parcel [is] exempt in counting the number of lots to determine if a plat is required." You explain in your letter that a parcel of land was divided by the owner into five smaller parcels, four being under five acres, and one parcel being over five acres. The owner of the original parcel now wishes to divide one of the parcels which is under five acres into two more parcels. The county planning commission wishes to know whether this divided parcel must be platted. See generally R.C. 711.001(A) (defining "plat" to mean "a map of a tract or parcel of land").

A subdivision of land which is effected by an instrument of conveyance need not be platted unless a county planning commission or other local planning authority adopts a rule which requires the platting of a subdivision created by a conveyance. See P.C. 711.10; R.C. 711.40; 1953 Op. Att'y Gen. No. 3285, p. 654 (the provisions of R.C. Chapter 711 do not require the platting of every subdivision, but

such a requirement may be established pursuant to the rules promulgated by the appropriate local authority). See also 1960 Op. Att'y Gen. No. 1921, p. 733; 1953 Op. Att'y Gen. No. 3343, p. 688. I assume for purposes of this opinion that the county planning commission has a rule which requires subdivisions created by conveyances to be platted.

R.C. 711.131 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. (Emphasis added.)

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).

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 county planning commission for approval without a plat. If the commission is satisfied that the proposed division is not contrary to applicable platting, subdividing, or zoning regulations, it must approve the division and stamp the conveyance of such parcel "approved by (planning authority); no plat required."

I assume that in the situation you present, the proposed division is along an existing public street and does not involve the opening, widening, or extension of any street or road. This brings me to the requirement that the division may not involve more than five lots after the original tract has been completely subdivided.

In 1964 Op. Att'y Gen. No. 64-1044 the meaning of this requirement was extensively discussed. Recognizing that there were no statutory definitions for guidance, my predecessor stated:

"tract" refers to a contiguous quantity of land undivided by lot lines. . . .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. A tract may be an original tract as to one owner but not another. While I am aware that this definition may permit *de facto* subdividing through successive ownership, I cannot infer that original means the initial source of a tract or parcel—which is its literal meaning—or that the legislature intended that an original tract be defined by time rather than by its composition or formation.

. . . .
. . . .the language "completely subdivided" means a tract that is divided into as many lots as the subdivider intends for the tract. A subdivider may of course subsequently decide to increase the number of lots in a subdivision but to do so—and assuming there will be more than five lots resulting—it will be necessary to replat the original tract.

...I do not believe that a tract to be "completely subdivided" must be divided into as many lots as feasibly proposed but all lands within the original tract must be included within one of the subdivided lots.

...a tract "completely subdivided" can be further subdivided by any party who purchases or obtains title to a lot or parcel in the subdivision large enough to divide without conflicting with local platting, subdivision or zoning regulations.

Id. at 2-196 to 2-197.

The opinion went on to conclude:

the ownership of four lots from an original tract may be transferred without plat unless the proprietor expresses an intent to further divide the remaining lot. In the event the owner further divides the lot remaining after the transfer of the first four lots, he is required to plat the original tract including the first four lots. A conclusion which follows because the exception in Section 711.131, supra, extends only where there are no more than five lots after the original tract has been completely subdivided. Thus, all lots in the original tract must be platted and approved before lot number five (assuming a part of the original tract is retained) may be recorded.

Obviously four lots will have already been transferred and the transfer recorded, and the approval or the failure to approve the plat will have no effect on these lots. The owner of the original tract, however, will be in the same position he would have been in had he not transferred the first four lots.

Id. at 2-198. Approved and followed, 1969 Op. Att'y Gen. No. 69-161 (limited circulation).

Thus, under the analysis and conclusion of Op. No. 64-1044, the owner of the original tract will be required to plat all of the lots in the original tract if he divides the lot in question, since such division will result in the creation of six lots, which will take the owner out of the exemption of R.C. 711.131. The fact that one of the lots is greater than five acres has no impact on the owner's duty to plat the tract, since no provision is made in R.C. 711.131 for the size of the lots to have any relevance or importance in determining whether the owner will be exempt from platting. Even though a parcel is greater than five acres, it is still a lot for purposes of R.C. 711.131. See 1964 Op. Att'y Gen. No. 64-1103 at 2-214 (a "lot" is "any portion, piece or division of land"). As long as more than five lots are involved after the tract has been subdivided, the division of the parcel must be platted. See generally Dougherty v. Torrence, 2 Ohio St. 3d 69, 442 N.E.2d 1295 (1982) (it is a well-established principle of statutory construction that, in interpreting a statute, words used may not be deleted, nor may words not used be inserted).

Although the fact that one of the lots is greater than five acres is irrelevant to an analysis of the situation you have presented, I note that there is a situation where the size of the lots will be relevant as to a duty to plat. R.C. 711.001(B)(1) defines "subdivision" 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 lot is divided into parcels, each of which is greater than five acres, such a division is not a "subdivision" for purposes of R.C. Chapter 711 if no new streets or

easements are involved. Consequently, 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. The original division of the lot in the situation you have presented was a subdivision since four of the resulting lots were less than five acres.

1971 Op. Att'y Gen. No. 71-083 dealt with the situation where an original tract was divided into five lots, all larger than five acres, and subsequently one of the lots was divided further into two lots, one being smaller than five acres. The opinion noted that the owners could not have been required to plat the first division of property since the property was not subdivided under R.C. 711.001. See 1963 Op. No. 358. The owner's subsequent division of the fifth lot into two lots, which was a subdivision, came within the exemption of R.C. 711.131, since only two lots resulted from the subdivision, and thus was not required to be platted. Op. No. 71-083 concluded at 2-286:

The further clause of Section 711.131 . . ."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 [the fifth tract subsequently subdivided into two tracts] has never been subdivided.

Thus, the fact that a parcel resulting from the division of a tract is greater than five acres will be relevant where a tract has been divided into lots, each of which is greater than five acres, and there is then a further division of one of the lots, where at least one resulting tract is less than five acres. The first division of property is not a subdivision and thus the resulting parcels need not be counted in determining whether a subsequent subdivision is exempt from platting under R.C. 711.131. As long as no more than five lots result from the subdivision, the owner is not required to plat the subdivision, regardless of the number of lots which have been created from the original tract.

Op. No. 71-083 criticized the conclusion of Op. No. 64-1044, that the further division of an original tract, which had been previously divided into five lots, requires the replatting of the original tract. I believe, however, that Op. No. 71-083 should be limited to its particular facts, which involved two divisions of property, only one of which was a subdivision. I concur with Op. No. 64-1044 to the extent that it stands for the proposition that if there is a division of an original tract into no more than five lots, where at least one lot is under five acres so that a subdivision is involved, and the owner then proceeds to effect another subdivision, so that at least six lots have resulted from the original tract, the entire tract must be platted, regardless of whether one lot is greater than five acres.

In conclusion, it is my opinion, and you are advised, that where an owner, for purposes of transfer of ownership, divides a tract of land into five lots, where at least one lot is under five acres, and then further subdivides one of the lots into two or more parcels where at least one parcel is under five acres, the entire tract must be platted if there is a local regulation which requires subdivisions created by conveyances to be platted.

¹ You have indicated in your letter of request that the tract in question was divided for the purpose of transfer of ownership.