

3285

CITY LEGISLATIVE AUTHORITY—APPROVAL OF PLAT
JURISDICTION OF CITY PLANNING COMMISSION—§§711.09,
711.101 R.C.

SYLLABUS:

1. Pursuant to Section 711.101, Revised Code, the legislative authority of a city may adopt rules and regulations establishing standards and specifications for the construction of streets, sanitary sewers, storm sewers, sidewalks, curbs and gutters, and such rules and regulations may require compliance therewith as a condition precedent to the approval of a plat required by Section 711.09, Revised Code, by the city planning commission. Opinion No. 3166, issued on July 27, 1962, approved and expanded.

2. A city planning commission which has adopted a plan under Section 711.09, Revised Code, has exclusive jurisdiction as to the approval of plats in the city and in the area within three miles of the corporate limits thereof, excluding land in other municipal corporations, and the county planning commission has no jurisdiction as to that area.

Columbus, Ohio, September 19, 1962

Hon. Robert L. Marrs, Prosecuting Attorney
Butler County, Hamilton, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“The Board of County Commissioners, through this office, is requesting an opinion concerning the interpretation of Section 711.09, Ohio Revised Code, as to the portion regarding the adoption of general rules and regulations by a municipality, governing plats and subdivisions of land falling within its jurisdiction, in order to secure and provide for the co-ordination of streets within the subdivision with existing streets and roads, or with the plans or plats of the municipal corporation, etc.

“It seems that the City of Middletown has adopted a plan for the major streets and other public grounds for the territory within three miles of its corporate limits. Further, being aware of 1955 OAG 5260 and 1929 OAG 847, which provide for the exclusiveness of the jurisdiction of plat and map approval with the municipality and the County Engineer’s duties under Sections 315.08 and 5559.01, ORC, our questions are:

“1. May a municipality set the specifications and standards for sanitary sewers, storm sewers, sidewalks, curb and gutter

building specifications, as well as the specifications for width and material for street and road improvements, as part of the general rules and regulations specified in Section 711.09?

"2. May a municipality, exercising its powers within the three-mile limit, require a sub-divider to make installation of any or all of the above improvements prior to giving its plat approval to the exclusion of the County Commission?

"3. Does a sub-divider's plat within the three-mile radius, as described above, containing the above improvements, also require the approval of the County Commission?"

Section 711.09, Revised Code, dealing with the approval of plats in cities and villages, reads, in part, as follows :

"Whenever a city planning commission adopts a plan for the major streets or thoroughfares and for the parks and other open public grounds of a city or any part thereof, or for the territory within three miles of the corporate limits thereof or any part thereof, except a part of such territory, lying within a municipal corporation, then no plat of a subdivision of land within such city or territory shall be recorded until it has been approved by the city planning commission and such approval indorsed in writing on the plat. If such land lies within three miles of more than one city, then this section shall apply to the approval of the planning commission of the city whose boundary is nearest to the land.

* * *

* * *

* * *

"The planning commission, platting commissioner, or legislative authority of a village may adopt general rules and regulations governing plats and subdivision of land falling within its jurisdiction in order to secure and provide for the co-ordination of the streets within the subdivision with existing streets and roads or with the plan or plats of the municipal corporation, 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 or safety but shall not impose a greater minimum lot area than 4800 square feet. Such rules and regulations may provide for the modification thereof by such planning commission in specific cases where unusual topographical or other exceptional conditions require such modification.

"However, no city or village 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 legislative authority of the city or village after a public hearing. Such rules and regulations shall be promulgated and published as

provided by sections 731.17 to 731.42, inclusive, of the Revised Code, and before adoption a public hearing shall be held thereon and a copy thereof shall be certified by the commission, commissioner, or such legislative authority to the county recorder of the county in which the municipal corporation is located.

“* * * When a plan has been adopted as provided in this section the approval of plats shall be in lieu of the approvals provided for by any other section of the Revised Code, so far as territory within the approving jurisdiction of the commission, commissioner, or such legislative authority, as provided in this section, is concerned. * * *” (Emphasis added)

Where a city planning commission has adopted a plan for the major streets or thoroughfares and for the parks and other open public grounds of the city or any part thereof, or for the territory within three miles of the corporate limits thereof or any part thereof, all plats of subdivisions of land within such city and three mile territory must be approved by the city planning commission. Section 711.09, *supra*. And in this regard, the syllabus of Opinion No. 847, Opinions of the Attorney General for 1929, page 1302, reads as follows:

“A city planning commission which has adopted a plan for the territory within three miles of the corporate limits thereof, has exclusive jurisdiction of the approval of plats and maps for the territory within three miles of the corporate limits of such municipality.”

Also, in Opinion No. 2775, Opinions of the Attorney General for 1958, page 579, it is stated at page 582:

“Section 71.09, Revised Code, relates to the powers of a city planning commission which has jurisdiction also for a distance of three miles outside the city. Section 711.10, *supra*, relates to the powers of a county or regional planning commission which has jurisdiction in the remaining area of the county.”

Section 711.101, Revised Code, allowing the legislative authority of a municipal corporation to adopt certain rules and regulations, reads as follows:

“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, and may make such installations a condition precedent to the sale or lease of lots in a subdivision or the issuance of a building permit for the improvement of a lot, and may require in lieu of actual construction a performance agreement and the furnishing of a performance bond or other guarantee or security for the purpose of assuring the installation of such improvements deemed necessary or appropriate in the public interest. The legislative authority of a municipal corporation or the board of county commissioners may accept such performance bond or other guarantee or security, under such conditions and time limitation as it may determine. However, any actual construction or performance bond required by the legislative authority of a municipal corporation or board of county commissioners shall be limited to improvements and facilities directly affecting the lots to be improved or sold.

“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.”

Section 711.09, *supra*, does not give a municipality authority to establish standards as to sanitary sewers, storm sewers, sidewalks, etc., and if your first question were to be answered on that section alone, I would be constrained to answer in the negative. Said Section 711.09 must, however, be read with Section 711.101, *supra*, which latter section allows the municipal corporation to adopt rules and regulations as to land falling within the jurisdiction of its planning commission, setting standards and specifications for the construction of streets, etc., and making compliance with such standards and specifications necessary for the approval of the plat required by Section 711.09, *supra*.

The effect of Sections 711.09 and 711.101, *supra*, were discussed in my Opinion No. 3166, issued on July 27, 1962. I held in the first paragraph of the syllabus of that opinion as follows:

“Pursuant to Section 711.101, Revised Code, the legislative authority of a city may adopt rules and regulations establishing standards and specifications for the construction of streets in the

city or within three miles of the corporate limits thereof, and such rules and regulations may require compliance therewith as a condition precedent to the approval of a plat required by Section 711.09, Revised Code, by the city planning commission.”

The question in Opinion No. 3166, *supra*, dealt only with the authority of the city as to establishing standards and specifications for the construction of streets, and the answer was limited to that question. Obviously, however, under the statutes in question, standards and specification may be adopted for the construction of streets, curbs, gutters, sidewalks, street lights, water mains, storm sewers, sanitary sewers, and other utility mains, piping and other facilities. Thus, the above-noted conclusion of Opinion No. 3166 may be expanded to that extent.

Regarding your second question, pertaining to a county (or regional) planning commission, Section 711.10, Revised Code, reads in part:

“Whenever a county planning commission or a regional planning commission adopts a plan for the major streets or highways of the county or region, then no plat of a subdivision of land within such county or 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 county or regional planning commission and such approval is indorsed in writing on the plat. * * *

“* * *

* * *

* * *”

Accordingly, the authority of the county planning commission as to plats is limited to the area of the county not within the jurisdiction of municipal planning commissions.

In view of the above, I am in accord with the views of my predecessors in the 1929 and 1958 opinions and conclude that Section 711.09, *supra*, gives a city planning commission which has adopted a proper plan, exclusive authority as to the approval of plats within the city and within three miles of the corporate limits thereof, except that area within said three miles in which another municipal corporation, or part thereof, is located.

The answer to the second question appears to be dispositive of the third. That is, since the city planning commission has exclusive authority in the area concerned, there is no requirement that the county commission approve a plat.

Answering your specific question, therefore, it is my opinion and you are advised :

1. Pursuant to Section 711.101, Revised Code, the legislative authority of a city may adopt rules and regulations establishing standards and specifications for the construction of streets, sanitary sewers, storm sewers, sidewalks, curbs and gutters, and such rules and regulations may require compliance therewith as a condition precedent to the approval of a plat required by Section 711.09, Revised Code, by the city planning commission. Opinion No. 3166, issued on July 27, 1962, approved and expanded.

2. A city planning commission which has adopted a plan under Section 711.09, Revised Code, has exclusive jurisdiction as to the approval of plats in the city and in the area within three miles of the corporate limits thereof, excluding land in other municipal corporations, and the county planning commission has no jurisdiction as to that area.

Respectfully,

MARK McELROY

Attorney General