OPINION NO. 94-034

Syllabus:

1. In appropriate circumstances, a county planning commission may, through its subdivision regulations adopted under R.C. 711.10, require developers to pay money in lieu of dedicating or reserving land for park and playground purposes.

2. A requirement that a developer pay money in lieu of dedicating or reserving land for park and playground purposes may be imposed pursuant to R.C. 711.10 if that requirement serves the purpose of providing the subdivision with adequate and convenient open spaces for recreation, light, air, and for the avoidance of congestion of population. To meet this standard, the money must be expended within a reasonable time for this purpose.

3. Pursuant to R.C. 711.10, a county planning commission has implied authority to establish and administer a fund to receive "money in lieu of land" for park and playground purposes in particular subdivisions and to apply the money in accordance with restrictions imposed upon it pursuant to relevant statutory and constitutional provisions.

4. A county planning commission has no authority to serve as a source of general funding for a county park district created

pursuant to R.C. Chapter 1545, but may, pursuant to R.C. 711.10, pay to a county park district money received in lieu of land for park and playground purposes in a particular subdivision, on the condition that the money is used in a timely manner for projects that benefit that subdivision as prescribed in R.C. 711.10. Any such donation must be approved by the probate court in accordance with R.C. 1545.11 prior to acceptance by the county park district.

5. A county planning commission has no authority to serve as a source of general funding for a county but may, pursuant to R.C. 711.10, pay to a county money received in lieu of land for park and playground purposes in a particular subdivision, on the condition that the money is used in a timely manner for projects that benefit that subdivision as prescribed in R.C. 711.10.

6. When, pursuant to R.C. 711.10, a county planning commission receives from a developer "money in lieu of land" for park and playground purposes in a particular subdivision, on the condition that the money be used in a timely manner for projects that benefit that subdivision as prescribed in R.C. 711.10, that money cannot be contributed to a county park district pursuant to R.C. 307.281.

To: Jeffrey M. Welbaum, Miami County Prosecuting Attorney, Troy, Ohio
By: Lee Fisher, Attorney General, May 31, 1994

You have requested an opinion concerning the powers of a county planning commission. Your specific questions are these:

> Question No. 1: May a County Planning Commission, through its subdivision regulations, require subdividers to pay money into a fund in lieu of dedicating or reserving land for park and playground purposes?
> Question No. 2: If such "money in lieu of land" provision is authorized, may the funds collected in lieu of land being dedicated or reserved for parks and playgrounds be contributed to and utilized by the County Park District for the creation of parks, reserves, easements and otherwise for the conservation or preservation of open spaces which benefits the regulated subdivisions and/or the county population or part thereof[?]

Authority of a County Planning Commission

A county planning commission is established pursuant to statute and has only those powers and duties that it is given by statute. *See* R.C. 713.22, .23; *State ex rel. Kahler-Ellis Co. v. Cline*, 69 Ohio L. Abs. 305, 125 N.E.2d 222 (C.P. Lucas County 1954). A county planning commission is empowered to make studies, maps, plans, recommendations, and reports concerning the physical, environmental, social, economic, and governmental characteristics and functions of the county. R.C. 713.23(A). A major duty of a county planning commission is the preparation of a county plan, which includes such matters as regional goals and policies for realizing those goals, the general pattern and intensity of land use and open space, the general locations and extent of public and private facilities and services, and the general locations and extent of areas for conservation and development of natural resources. R.C. 713.23(B). After

a county planning commission adopts a plan for the major streets or highways of the county, no plat of a subdivision of land within the county (other than land within a municipal corporation or within three miles of a city or one and one-half miles of a village, as provided in R.C. 711.09) may be recorded until it is approved by the county planning commission and approval is endorsed on the plat. R.C. 711.10.

The authority of a county planning commission to adopt subdivision regulations is set forth in the Revised Code, as follows:

> *Any ... county ... planning commission shall adopt general rules, of uniform application, governing plats and subdivisions of land falling within its jurisdiction, to secure and provide* for the proper arrangement of streets or other highways in relation to existing or planned streets or highways or to the county ... plan, *for adequate and convenient open spaces for* traffic, utilities, access of fire fighting apparatus, *recreation, light, air, and for the avoidance of congestion of population. The rules may provide for the modification thereof by the county ... planning commission in specific cases where unusual topographical and other exceptional conditions require such modification....*
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> ... [N]o county ... planning commission shall adopt any rules 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 board of county commissioners after a public hearing.... Approval of a plat shall not be an acceptance by the public of the dedication of any street, highway, or other way or open space shown upon the plat.

R.C. 711.10 (emphasis added). Pursuant to R.C. 711.10, the county planning commission may refuse to approve a plat that is not in conformance with its rules. *See* 1988 Op. Att'y Gen. No. 88-054. The commission may not, however, require a person submitting a plat to alter the plat if the plat complies with the general rules governing plats and subdivisions that were in effect when the plat was submitted. R.C. 711.10.

R.C. 711.10 authorizes a county planning commission to adopt subdivision regulations that provide for adequate and convenient open spaces for recreation, light, air, and for the avoidance of congestion of population.[1] It has, accordingly, been found that a county planning commission may impose a requirement that, in order to obtain plat approval, a subdivision must include an appropriate amount of space for parks. *See* 1956 Op. Att'y Gen. No. 7113, p. 679 (syllabus, paragraph 2) ("[a] county ... planning commission may, under the terms of [R.C. 711.10], require, within the limits of its territorial jurisdiction, as a condition precedent to its approval of a plat, compliance with rules ... requiring the dedication of a reasonable amount of land for park purposes"). *See generally* 1974 Op. Att'y Gen. No. 74-070 (an owner of real property cannot be required to dedicate a portion of his land as a public street, since dedication

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[1] A related provision, R.C. 711.101, authorizes a board of county commissioners, acting with respect to land falling within the jurisdiction of its planning commission, to adopt general rules requiring and securing the construction of various types of improvements authorized by R.C. 711.10. The statute names specific types of improvements -- "the construction of streets, curbs, gutters, sidewalks, street lights, water mains, storm sewers, sanitary sewers, and other utility mains, piping, and other facilities" -- and authorizes the board of county commissioners

is a voluntary procedure, but the city planning commission may refuse to approve the plat of a proposed subdivision if the plat does not have the streets required under a duly adopted city plan or is otherwise inconsistent with the plan or applicable regulations).

"Money in Lieu of Land" Requirement

Your first question is whether subdivision regulations of a county planning commission may require subdividers to pay money into a fund in lieu of dedicating or reserving land for park and playground purposes. It is appropriate to consider first whether a developer may be required to pay "money in lieu of land," and then to address the matter of a fund and the uses of such money.[2]

R.C. 711.10, quoted in part above, does not expressly authorize a county planning commission to require a developer to pay money in lieu of providing land for park and playground purposes. But neither does it require a county planning commission to provide land for park and playground purposes as the only means of fulfilling the statutory objectives. Instead, it confers broad discretionary authority upon the county planning commission to adopt rules that provide for adequate and convenient open spaces for recreation, light, air, and for the avoidance of congestion of population, and to make modifications in cases involving unusual topographical and other exceptional conditions. *See generally* 1983 Op. Att'y Gen. No. 83-069, at 2-285 (discussing construction of the word "provide" to include obtaining by a variety of means). A county planning commission may determine that the most effective way to fulfill this objective is usually to require that a certain amount of park space be included in each subdivision. But it appears that the planning commission also has the flexibility to allow the required park land to be located outside a particular subdivision, if it finds in its discretion that such an arrangement better serves the statutory goal.

Assume, for example, that three small subdivisions are being developed in an area at the same time. One has a piece of land that would be suitable for a large and beautiful park; the other two, located within easy walking distance of the first, have terrain that is not suitable for park land. The county planning commission would be authorized under R.C. 711.10 to permit the three developers to contribute to a single large park, rather than requiring each developer to provide a park within his development, if it found that such arrangement would serve the goal of providing adequate and convenient open spaces for recreation, light, air, and for the avoidance of congestion of population.

Consider, next, a situation in which development is delayed in the subdivision with the excellent park land, so that the park will not be available until a short time after the other

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to establish standards and specifications, to make the installation of the improvements a condition precedent to the sale or lease of lots in a subdivision or the issuance of a building permit, and to require in lieu of actual construction a performance agreement and performance bond or other guarantee or security. R.C. 711.101. Any actual construction or performance bond must, however, "be limited to improvements and facilities directly affecting the lots to be improved or sold." R.C. 711.101.

[2] Your letter of request references a particular set of subdivision regulations. This opinion discusses general principles that may be relevant to those regulations but does not address the validity or applicability of those particular regulations or of any other specific regulations.

subdivisions are finished. R.C. 711.10 appears flexible enough to permit the county planning commission simply to require that the other two developers contribute sums of money to be used at the appropriate time to complete that park. A requirement of providing money in lieu of park land where the money is to be used in the near future for a specific parcel of park land located near the subdivision and readily accessible to the residents of the subdivision thus appears to fall comfortably within the discretionary authority granted by R.C. 711.10.

In 1956 Op. No. 7113, one of my predecessors considered the general language of R.C. 711.10 and found that it clearly implied the authority to require the dedication of land for park purposes. That opinion states:

> The planning commission is granted the power to adopt rules and regulations to achieve stated purposes -- that is, inter alia, to provide for recreation, light and air, and to avoid the congestion of population. I am unable to see how a planning commission could possibly achieve the purposes set forth if it could not regulate the size of lots and require the dedication of land for park purposes. There would be no question, I suppose, that the dedication of land for streets can be required. The purposes of such dedication are those stated -- that is, to provide for the movement of traffic, for the access of fire-fighting apparatus, etc. I see no reason to distinguish regulations for the achievement of such purposes from those to achieve other purposes prescribed in the same statute.

1956 Op. No. 7113, at 684. By the same reasoning, if a county planning commission were to judge in appropriate circumstances that the stated statutory purposes could be achieved by requiring a developer to pay money for park purposes instead of dedicating land for such purposes, then it could adopt rules and regulations to that end. *See generally Jordan v. Village of Menomonee Falls*, 28 Wis. 2d 608, 137 N.W.2d 442 (1965) (upholding a "money in lieu of land" requirement as a valid means of facilitating adequate provision for schools, parks, playgrounds and other public requirements), *app. dismissed*, 385 U.S. 4 (1966).

Research has disclosed no Ohio authority that directly addresses the validity of a "money in lieu of land" requirement under R.C. 711.10. Certain Ohio cases have, however, referred to requirements of city planning commissions that money be paid in lieu of the provision of open space, without directly addressing the validity of the requirements. *See State ex rel. Harpley Builders, Inc. v. City of Akron*, 62 Ohio St. 3d 533, 534, 584 N.E.2d 724, 724 (1992) (discussing the authority of a city planning commission to rescind its preliminary approval of a development after the developer fulfilled all the conditions specified in the preliminary approval, including the condition "that the developer pay the 'required fee in lieu of open space'"); *City of Fairlawn v. Fraley*, No. 9827 (Ct. App. Summit County Feb. 11, 1981) (city ordinance required a payment of money in lieu of open land in a development and the developer made the payment; the court upheld the lower court's refusal to consider the developer's argument that the requirement was unconstitutional, concluding that the developer waived his objection by accepting the benefits of the ordinance).[3] Nothing in the case law is thus inconsistent with the

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[3] Although the powers of a city planning commission may differ from those of a county planning commission because of differences in statutory language, *compare* R.C. 713.01-.15 *with* R.C. 713.22-.23, and also because of the "home rule" powers granted to municipal corporations by the Ohio Constitution, *see* Ohio Const. art. XVIII, §§3-7; R.C. 713.25 (when

conclusion that such a requirement is permissible under the general authority vested in a county planning commission under R.C. 711.10.

The answer to your first question is, therefore, that a county planning commission may, through its subdivision regulations, require developers to pay money in lieu of dedicating or reserving land for park and playground purposes in appropriate circumstances. The restrictions that apply to such a requirement are discussed below.

Restrictions on "Money in Lieu of Land" Requirement

The conclusion that R.C. 711.10 does not preclude a county planning commission from requiring a payment of "money in lieu of land" does not mean that there are no limitations on the payments of money that may be required under the law. R.C. 711.10 authorizes a county planning commission to adopt rules to govern plats and subdivisions of land falling within the jurisdiction of the commission for the purpose of providing for adequate and convenient open spaces for recreation, light, air, and for avoidance of congestion for those plats and subdivisions. Any money paid in lieu of land for park purposes must be directed to the purposes of R.C. 711.10. *See generally, e.g., Coronado Development Co. v. City of McPherson*, 189 Kan. 174, 177, 368 P.2d 51, 53 (1962) (considering statutory language similar to that appearing in R.C. 711.10 and stating, in part: "a careful analysis of the statute compels a conclusion there is nothing in any of its provisions authorizing the assessment of money as a revenue measure for *other public areas*").

Ohio courts have, in the past, adopted a restrictive view of the types of exactions that may be imposed upon a developer. For example, in *McKain v. Toledo City Plan Commission*, 26 Ohio App. 2d 171, 270 N.E.2d 370 (Lucas County 1971), the court held that a municipality was not authorized to require a developer to dedicate a strip of land to the municipality in order to widen a main thoroughfare located more than seven hundred feet from the proposed subdivision and totally unrelated to the subdivision. The court set forth this general rule for determining the validity of subdivision regulations:

> A municipality may require in subdivision regulations that a developer provide streets that are necessitated by the activity within the subdivision and such developer may be required to assume any costs which are specifically and uniquely attributed to his activities which would otherwise be cast upon the public.... If the subdivision requirement is within the statutory grant of power to the municipality and if the burden cast upon the subdivider is specifically and uniquely attributable to his activity, then, the requirement is permissible; if not, it is forbidden and amounts to a confiscation of private property in contravention of constitutional prohibitions, rather than a reasonable regulation under the police power.

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the planning commission of a municipal corporation adopts the plan of a county planning commission, the plan has "the same force within such municipal corporation as is provided by law or charter for plans prepared and adopted by the local planning commission"); *Geauga County Board of Commissioners v. Munn Road Sand & Gravel*, 67 Ohio St. 3d 579, 621 N.E.2d 696 (1993), many principles of law apply alike to both city and county planning commissions. *See, e.g.*, 1974 Op. Att'y Gen. No. 74-070; 1962 Op. Att'y Gen. No. 3166, p. 580.

Id. at 176-77, 270 N.E.2d at 374 (citations omitted). Applying this rule in *R.G. Dunbar, Inc. v. Toledo Plan Commission*, 52 Ohio App. 2d 45, 367 N.E.2d 1193 (Lucas County 1976), the court rejected the attempt of a city planning commission to impose, as a condition for plat approval, the requirement that the developer dedicate, through the proposed subdivision, a right-of-way for a major thoroughfare not attributable to the developer's activity but for the benefit of the general public. Provisions of the Ohio Constitution prohibiting the taking of private property for public use without compensation appear in art. I, §19. *See State ex rel. Kahler-Ellis Co. v. Cline*, 69 Ohio L. Abs. at 309, 125 N.E.2d at 225 (subdivision regulation is constitutional only when the restriction of property use "bears a substantial relationship to the public health, morals and safety").

Apart from Ohio law governing the power of a county planning commission, there are federal constitutional provisions that restrict the authority to require a developer to make payments of "money in lieu of land." It is, of course, clear that any local regulation must comply with federal due process and equal protection requirements. *See* U.S. Const. amends. V, XIV. Exactions imposed on developers may, further, be analyzed as possible takings of private property without just compensation under the Fifth and Fourteenth Amendments of the United States Constitution. *Id.*

In *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987), the United States Supreme Court held that the California Coastal Commission could not, as a condition for permission to replace a small bungalow with a larger house, require the permittees to transfer to the public an easement across their beachfront property. The Court found, instead, that such a condition constituted a taking of land for which the owners must be compensated. *See* U.S. Const. amends. V, XIV. *See generally Agins v. Tiburon*, 447 U.S. 255, 260 (1980) ("[t]he determination that governmental action constitutes a taking is, in essence, a determination that the public at large, rather than a single owner, must bear the burden of an exercise of state power in the public interest"). The general analysis adopted by the Court in *Nollan* appears to be applicable to various sorts of land use regulation, including the approval of subdivisions. *See, e.g., Ehrlich v. City of Culver City*, 15 Cal. App. 4th 1737, 19 Cal. Rptr. 2d 468 (1993) (applying *Nollan* to a mitigation fee and an in-lieu-of-art fee charged to a developer who sought to replace a private tennis club and recreational facility with deluxe townhomes and finding the fees valid; there apparently was an in-lieu-of-parkland fee whose validity was not challenged), *petition for cert. filed*, 62 U.S.L.W. 3410 (U.S. Nov. 24, 1993) (No. 93-842).

In *Nollan*, the Court recognized the principle that land-use regulation does not effect a taking if it substantially advances legitimate state interests and does not deny an owner economically viable use of his land. *Nollan,* 483 U.S. at 834. The Court went on to conclude that "a permit condition that serves the same legitimate police-power purpose as a refusal to issue the permit should not be found to be a taking if the refusal to issue the permit would not constitute a taking." *Id.* at 836. Under this principle, a county planning commission may condition the approval of a subdivision upon a requirement that serves the same legitimate police-power purpose as a refusal to issue the permit, if that refusal would not constitute a taking. Thus, if the commission could refuse to approve a subdivision because the subdivision does not satisfy requirements with respect to open spaces for recreation, light, air, and for the avoidance of congestion of population, then the commission could impose a condition that serves the purpose of providing adequate open spaces for recreation, light, air, and for the avoidance of congestion of population.

There is currently no clear definition of how close the nexus must be between the condition imposed upon a permittee and the public need that the condition serves in order for

a court to conclude that no taking has occurred. *Nollan,* 483 U.S. at 834-38. In applying *Nollan*, some courts have concluded that, "[w]here the condition on approval constitutes a physical taking of private property, the condition must substantially advance the governmental purpose and is subject to heightened scrutiny by the courts," whereas "[m]onetary exactions compelled as a condition of approval must be only rationally related to the governmental purpose." *Ehrlich v. City of Culver City*, 15 Cal. App. 4th at 1749, 19 Cal. Rptr. 2d at 475 (citations omitted); *see also Blue Jeans Equities West v. City and County of San Francisco*, 3 Cal. App. 4th 164, 4 Cal. Rptr. 2d 114 (citing various cases and authorities), *cert. denied*, 113 S.Ct. 191 (1992); *cf. Seawall Associates v. City of New York*, 74 N.Y.2d 92, 111, 542 N.E.2d 1059, 1068 (discussing the "close nexus" test articulated in *Nollan*), *cert. denied*, 493 U.S. 976 (1989). The *Nollan* case used the language of "substantially advanc[ing]" a "legitimate state interest," *Nollan,* 483 U.S. at 834 n. 3, but, for purposes of discussion, also accepted the proposition that a reasonable relationship is a close enough fit between the condition and the burden, *id.* at 838. Some cases applying *Nollan* to exaction issues generally have concluded that a reasonable relationship is constitutionally sufficient as a nexus. *See, e.g., Commercial Builders v. City of Sacramento*, 941 F.2d 872, 875 (9th Cir. 1991) (upholding a city ordinance that conditioned certain nonresidential building permits upon the payment of a fee for low-income housing), *cert. denied*, 112 S.Ct. 1997 (1992).

In a recent Ohio case, the Hamilton County Court of Appeals discussed *Nollan* in connection with issues of zoning. The court found that *Nollan* adopted the standards of the *Agins* case for determining when regulation constitutes a taking, stating: "The determination of whether a governmental regulation amounts to a constitutional taking under the doctrine of inverse condemnation is not made according to any precise rule and generally requires a weighing of private and public interests." *Shopco Group v. City of Springdale*, 66 Ohio App. 3d 702, 705, 586 N.E.2d 145, 147 (Hamilton County) (citing *Agins*, 447 U.S. at 260-61), *appeal dismissed*, 55 Ohio St. 3d 709, 563 N.E.2d 302 (1990).

It follows from *Nollan* and related cases that a "money in lieu of land" requirement may be constitutionally imposed if a sufficient nexus exists between that requirement and the purpose of providing adequate and convenient open spaces for recreation, light, air, and for the avoidance of congestion of population. R.C. 711.10 clearly authorizes a county planning commission to adopt rules providing for open spaces and to reject plats of subdivisions that do not comply with the rules. The issue to be determined, then, is whether a particular condition -- in this case, payment of money in lieu of land -- serves the same legitimate purpose as a proper exercise of the police power as does a refusal to approve the subdivision. In other words, does the "money in lieu of land" condition operate to provide the subdivision for which approval is sought with adequate open spaces for recreation, light, air, and for the avoidance of congestion of population?

A precise answer to this question in each particular instance will involve determinations of fact, which cannot be made by means of an opinion of the Attorney General. It is, however, clear that certain factors must be satisfied for this question to be answered in the affirmative. For a "money in lieu of land" requirement to serve the authorized purposes of R.C. 711.10, the use of the money must benefit the residents of the subdivision for which the money is paid. The goal of R.C. 711.10 is to have adequate and convenient open spaces available to residents of a subdivision. Land that is not readily accessible to the residents will not serve this purpose. Similarly, the money received in lieu of land must be spent in a timely fashion to benefit the residents of the subdivision. Placing it in a fund to be saved for use at an indefinite future date will not serve the purpose of R.C. 711.10. *See generally City of College Station v. Turtle Rock Corp.*, 680 S.W.2d 802 (Tex. 1984) (upholding "money in lieu of land" requirement where

money must either be spent within two years for the acquisition or development of a neighborhood park or be returned to property owners); *Hollywood, Inc. v. Broward County*, 431 So. 2d 606 (Fla. Dist. Ct. App.), *cert. denied*, 440 So. 2d 352 (Fla. 1983) (upholding "money in lieu of land" option where funds were to be spent within a reasonable period of time for parks within fifteen miles of the platted land). Further, it is appropriate that amounts required from a particular subdivision be proportional to the effects resulting from development of the subdivision. If a lack of recreation space affects a larger community, a single subdivision cannot be required to provide more than its proportionate share of the remedy. *See generally First English Evangelical Lutheran Church v. County of Los Angeles*, 482 U.S. 304, 321 (1987) ("many of the provisions of the Constitution are designed to limit the flexibility and freedom of governmental authorities, and the Just Compensation Clause of the Fifth Amendment is one of them").

Your question asks generally about placing money in lieu of land "into a fund." It is clear that the simple placement of such money into a fund will not satisfy the constitutional restrictions on use of the money. Rather, the collection and expenditure of "money in lieu of land" is permissible under R.C. 711.10 and relevant constitutional provisions only if there is assurance that the money will be expended in a timely fashion to provide the benefits of adequate and convenient open spaces to the residents of the subdivision.

Payment to the County Planning Commission of Money Received in Lieu of Park Land

The provisions of R.C. 711.10 that permit a county planning commission to require the payment of "money in lieu of land" for park purposes also permit a county planning commission to establish and administer a fund to receive such money. If the use of money for park purposes outside a subdivision is required to implement rules adopted under R.C. 711.10, the county planning commission must, by necessary implication, have authority to accept money for those purposes and administer the money in accordance with the restrictions imposed upon it pursuant to relevant statutory and constitutional provisions. *See generally, e.g., State ex rel. Copeland v. State Medical Board*, 107 Ohio St. 20, 24, 140 N.E. 660, 661 (1923) (a governmental entity created by statute "must be held to have such implied powers as are necessary to carry into effect the express powers and duties enjoined upon it" by statute).

The authority of a county planning commission to establish and administer a fund to hold money in lieu of land for park purposes is consistent with the statutory powers and duties granted to such a planning commission. As discussed above, a county planning commission has powers relating to the preparation of plans, goals, and policies and the collection and analysis of data relating to those plans, goals, and policies, and also has powers relating to platting and subdivisions. R.C. 711.10, 713.23. It also has express authority to receive money and services from governmental entities or "civic sources." R.C. 713.22. Although a private developer is not a governmental entity, it would appear that payments made by a private developer to achieve the statutory purposes prescribed in R.C. 711.10 would constitute a "civic source[ ]" as mentioned in R.C. 713.22. *See, e.g., Black's Law Dictionary* 244 (6th ed. 1990) (defining "[c]ivic" as "[p]ertaining to a city or citizen, or to citizenship," and "[c]ivic enterprise" as "[a] project or undertaking in which citizens of a city co-operate to promote the common good and general welfare of the people of the city").

In order to carry out its responsibilities under R.C. 711.10, a county planning commission may, accordingly, create a fund to hold "money in lieu of land" for park purposes. The commission may administer the fund for the purposes for which it is created, applying each

contribution of money to projects that benefit the particular subdivision for which the money was designated. The commission must assure, in each case, that the money is expended in accordance with those restrictions imposed upon it by relevant statutory and constitutional provisions. As discussed above, money paid by a developer in lieu of land for park and playground purposes must be expended within a reasonable time in a manner that benefits the residents of the subdivision by making adequate and convenient open spaces available to them.

Payment to a Park District Created under R.C. Chapter 1545 of Money Received in Lieu of Park Land

Your second question is whether "money in lieu of land" may be contributed to and utilized by the county park district "for the creation of parks, reserves, easements and otherwise for the conservation or preservation of open spaces which benefits the regulated subdivisions and/or the county population or part thereof." It appears that money received in lieu of park land pursuant to R.C. 711.10 may, in appropriate circumstances, be used by a park district to further the purposes of R.C. 711.10. A park district may be created under R.C. 1545.01 to include all or a part of the territory within a county. You have asked about a county park district created pursuant to R.C. Chapter 1545; the same analysis applies to other park districts created pursuant to that chapter. *See, e.g.,* 1991 Op. Att'y Gen. No. 91-009.

A park district created under R.C. Chapter 1545 is governed by a board of park commissioners. R.C. 1545.041, .05. The board is a body politic and corporate, with authority to hire employees and procure goods. R.C. 1545.07.

A board of park commissioners has general authority to "create parks, parkways, forest reservations, and other reservations and afforest, develop, improve, protect, and promote the use of the same in such manner as the board deems conducive to the general welfare." R.C. 1545.11. A board of park commissioners has express authority to acquire park lands by gift, devise, purchase, or appropriation. R.C. 1545.11. The board also has authority to accept money for park purposes, as follows:

> In furtherance of the use and enjoyment of the lands controlled by it, the board may accept donations of money or other property, or may act as trustees of land, money, or other property, and use and administer the same as stipulated by the donor, or as provided in the trust agreement. The terms of each such donation or trust shall first be approved by the probate court before acceptance by the board.

It would thus be possible for a county planning commission to take money from its fund holding "money in lieu of land" for park purposes and pay that money to a park district created under R.C. Chapter 1545 for purposes that meet the requirements of R.C. 711.10. If the use for which the money is intended satisfies the park district's purposes, and if the donation is approved by the probate court, the board of park commissioners may accept the money and use and administer it as stipulated by the county planning commission, in accordance with R.C. 711.10 and applicable constitutional restrictions. R.C. 1545.11.[4]

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[4] R.C. 1545.11 states that it applies "to districts created prior to April 16, 1920." It has been established that R.C. 1545.11 applies also to park districts created after that date. *See* 1983 Op. Att'y Gen. No. 83-020; 1978 Op. Att'y Gen. No. 78-045.

R.C. 1545.14 authorizes a board of park commissioners, by agreement, to assume control of all or a portion of existing parks or park lands of another public authority, or to contract or cooperate with such an authority "in connection with the use, development, improvement, and protection of parks or park lands." The authority of a park district to use moneys for the benefit of particular parks or particular subdivisions may thus, in appropriate circumstances, extend beyond lands owned by the park district.

It is clear that a county planning commission has no authority to operate as a source of general funding for a county park district. If, in specific circumstances, the county planning commission determines that a particular project of the county park district would provide benefit to a subdivision within the strictures of R.C. 711.10, R.C. 711.10 would permit the commission, through its subdivision regulations, to collect from the developer an amount of "money in lieu of land" and pay the money to the county park district for that particular project. Any payment to the county park district must, however, meet the requirements of R.C. 1545.11 and be approved by the probate court. R.C. 711.10 does not preclude the use of "money in lieu of land" in conjunction with a project of a county park district. It does not, however, permit moneys obtained under R.C. 711.10 to be transferred to a county park district for any use that will not make adequate and convenient open spaces available to the residents of the subdivision whose developer provided those moneys.

As discussed above, it is not clear precisely how close the nexus must be between the purpose for which an exaction is collected and the project for which it is spent. It appears, however, that the general rule applicable in this instance is that the money must be expended in a manner that serves the purpose of providing the subdivision with adequate and convenient open spaces for recreation, light, air, and for the avoidance of congestion of population.

Payment to the County of Money Received in Lieu of Park Land

The conclusion that a county planning commission may establish and administer a fund containing "money in lieu of land" for park purposes raises the issue of how the money can best be applied to appropriate uses. A clear possibility is that the money may be paid to the county, to hold and administer for park purposes.

A board of county commissioners has general authority to "acquire, construct, improve, maintain, operate, and protect parks, parkways, and forests, and provide an agency for their administration." R.C. 301.26. For those purposes, the board may acquire real estate and may "receive and execute the terms of gifts and bequests of money, lands, or other properties." R.C. 301.26. Thus, a county planning commission might pay to a county "money in lieu of land" for park purposes, upon terms requiring that the money be applied to projects that meet the requirements of R.C. 711.10 and relevant constitutional limitations, provided that the county is willing to receive and administer the money for such projects. The money so received would not be available to the county for general park purposes but would, instead, be designated for uses that benefit particular subdivisions as prescribed in R.C. 711.10, and its expenditure would be so restricted.

A similar conclusion would be reached with respect to any entity that has authority to establish and operate parks and that has authority to accept money for particular uses. *See, e.g.*, R.C. 9.20; R.C. 511.18-.32 (township parks). In each case, it would be necessary for the county planning commission to assure that the "money in lieu of land" is actually used in a timely manner for purposes that meet the applicable statutory and constitutional requirements as discussed above.

Contribution of Money Under R.C. 307.281

You ask specifically whether "money in lieu of land" could be made available to the county park district under R.C. 307.281. R.C. 307.281 states:

> *The board of county commissioners* of any county *may make contributions of moneys*, supplies, equipment, office facilities, and other personal property or services *to any board of park commissioners* established pursuant to Chapter 1545. of the Revised Code *for the expenses of park planning, acquisition, management, and improvement.* The board of park commissioners may accept such contributions without the approval of the terms by the probate judge.
>
> *Any moneys contributed by the board of county commissioners for such purposes shall be drawn from the general fund in the county treasury not otherwise appropriated.* The board of county commissioners may anticipate the contributions of moneys for such purposes and enter the amount of such contributions in its annual statement to the county budget commission for inclusion in the budget upon which rates of taxation are based. (Emphasis added.)

Under this provision, the board of county commissioners may make contributions to a board of park commissioners for the expenses of park planning, acquisition, management, and improvement. The money so contributed must, however, be "drawn from the general fund in the county treasury not otherwise appropriated." R.C. 307.281.

Any money paid to a county planning commission in lieu of park land is held by the county planning commission, which is an entity separate from the county, rather than by the board of county commissioners. *See* R.C. 713.22; R.C. 2744.01(F). Further, the money so paid to the county planning commission must be designated for use to benefit a particular subdivision as prescribed in R.C. 711.10. The money, therefore, is not unappropriated money in the general fund available for contribution to a county park district by the board of county commissioners pursuant to R.C. 307.281. *See generally* R.C. 5705.09(A), (F), (H); R.C. 5705.12.

If any "money in lieu of land" for park purposes is paid to the county by the county planning commission, that money likewise must be designated for use to benefit a particular subdivision. Therefore, even though it is held by the county, it does not constitute unappropriated money in the general fund and, accordingly, it is not available for contribution to a county park district pursuant to R.C. 307.281. *See generally* R.C. 5705.09(A), (F), (H); R.C. 5705.12.

Conclusion

It is, therefore, my opinion, and you are advised, as follows:

1. In appropriate circumstances, a county planning commission may, through its subdivision regulations adopted under R.C. 711.10, require developers to pay money in lieu of dedicating or reserving land for park and playground purposes.

2. A requirement that a developer pay money in lieu of dedicating or reserving land for park and playground purposes may be imposed

pursuant to R.C. 711.10 if that requirement serves the purpose of providing the subdivision with adequate and convenient open spaces for recreation, light, air, and for the avoidance of congestion of population. To meet this standard, the money must be expended within a reasonable time for this purpose.

3. Pursuant to R.C. 711.10, a county planning commission has implied authority to establish and administer a fund to receive "money in lieu of land" for park and playground purposes in particular subdivisions and to apply the money in accordance with restrictions imposed upon it pursuant to relevant statutory and constitutional provisions.

4. A county planning commission has no authority to serve as a source of general funding for a county park district created pursuant to R.C. Chapter 1545, but may, pursuant to R.C. 711.10, pay to a county park district money received in lieu of land for park and playground purposes in a particular subdivision, on the condition that the money is used in a timely manner for projects that benefit that subdivision as prescribed in R.C. 711.10. Any such donation must be approved by the probate court in accordance with R.C. 1545.11 prior to acceptance by the county park district.

5. A county planning commission has no authority to serve as a source of general funding for a county but may, pursuant to R.C. 711.10, pay to a county money received in lieu of land for park and playground purposes in a particular subdivision, on the condition that the money is used in a timely manner for projects that benefit that subdivision as prescribed in R.C. 711.10.

6. When, pursuant to R.C. 711.10, a county planning commission receives from a developer "money in lieu of land" for park and playground purposes in a particular subdivision, on the condition that the money be used in a timely manner for projects that benefit that subdivision as prescribed in R.C. 711.10, that money cannot be contributed to a county park district pursuant to R.C. 307.281.