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BOND—COUNTY COMMISSIONERS—WITHOUT AUTHORITY TO REQUIRE DEDICATOR OF PLATTED LAND TO POST BOND AS GUARANTEE OF FULL PERFORMANCE OF REQUIREMENTS SET UP BY COMMISSIONERS—SECTION 3583-1 G. C.

SYLLABUS:

County commissioners are without authority pursuant to Section 3583-1, General Code, to require a dedicator of platted land to post bond as a guarantee of full performance of requirements set up by the county commissioners.

Columbus, Ohio, January 16, 1950

Hon. George R. Smith, Prosecuting Attorney
Greene County, Xenia, Ohio

Dear Sir :

Your letter requesting my opinion reads as follows :

“On behalf of the Greene County Commissioners, I request your opinion on the following matter relating to the platting of land in unincorporated sections of this county, and the dedication of streets and alleys therein to the public use.

“This county has no Planning Commission. In the past, when the owner of a certain parcel of land desired to plat same and dedicate certain portions to said plat for street and alley purposes, the County Commissioners, as a condition to their approval and acceptance of said plat and dedication, required that the person platting said area agree, in writing, to meet the Commissioners' requirements (whatever they might be) regarding the condition, location, manner of construction, etc., of said streets and alleys and that the owner comply with the commissioners' recommendations in reference to proper drainage of the platted area. Upon the owner's written agreement (usually contained in the dedication), to comply with said specifications, the commissioners have approved and accepted said plat and dedication. In many instances, the lots contained within said plat were quickly sold and the owner of the original plat departed with his profits having failed to comply with the aforementioned conditions and recommendations relating to the dedication of the streets and alleys.

“In most instances, the county and the lot owners have been without a practicable remedy to enforce said conditions. In order to remedy this condition to a certain extent, the County Commissioners desire to set up as one of their rules and regulations the provisions that before a plat and dedication of streets and alleys as aforementioned be accepted and approved, that the applicant post a bond as a guarantee to full and complete performance that the specifications and requirements of the Commissioners regarding streets and alleys and drainage as agreed to by the platter of the land in the dedication as aforesaid.

“I can find no direct authority granting this right to the County Commissioners; nor do I find authority prohibiting it. G. C. Section 3583-1 provides in part as follows: ‘County commissioners may adopt general rules and regulations governing plats and subdivisions of land falling within their jurisdiction, to secure and provide the coordination of the streets within the subdivision with existing streets and roads, or with existing

county highways, for the proper amount of open spaces for traffic, circulation and utilities, and for the avoidance of future congestion of the population detrimental to the public safety, health and welfare.'

"Our specific question is, then do the county commissioners have authority to require, as a condition to their acceptance and approval of a plat and dedication of streets and alleys therein that the owner of the platted land post a bond as a guarantee to full performance of the specifications and requirements of the commissioners as aforesaid?"

County commissioners have only such powers as are expressly conferred upon them by statute and such implied powers as are necessary to carry into effect the powers expressly granted. See *Elder v. Smith*, 103 O. S. 369, 133 N. E. 791; *Gorman v. Heuck*, 41 O. App. 453, 180 N. E. 67.

What are the powers granted to the county commissioners so far as same relate to plats of land lying outside of the municipality? Section 3583 of the General Code provides in part:

"After the plat or map is completed, it shall be certified by the surveyor, and acknowledged by the owner or owners before an officer authorized to take the acknowledgment of deeds, who shall certify his official act on the plat or map. * * * Such plat or map * * * shall thereupon be recorded in the office of the county recorder. *Provided, however, that no plat or map certifying lands outside of a municipal corporation, wherein the proprietor shall dedicate public highways, shall be entitled to be recorded without the approval thereon of the county commissioners of the county wherein such lands are situated, * * *.*"

(Emphasis added.)

Section 3583-1 of the General Code provides that:

"Upon the submission of a plat for approval, in accordance with the provisions of the preceding section, the county commissioners shall certify thereon the date of such submission, and the approval of the county commissioners required by the preceding section or the refusal to approve shall take place within 30 days thereafter; otherwise such plat shall be deemed to have been approved and shall thereafter be entitled to be recorded as if bearing such approval. The county commissioners may adopt general rules and regulations governing plats and subdivisions of land falling within their jurisdiction, to secure and provide for the coordination of the streets within the subdivision with existing streets and roads or with existing county highways, 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, safety or welfare; but such rules and regulations shall not require the dedication to the general public of open grounds or spaces other than streets and ways, nor impose a greater minimum lot area than three thousand five hundred (3,500) square feet, nor any requirement as to the minimum percentage of lot occupancy, nor as to the height, bulk, location or use of buildings; and minor streets shall not be required to be wider than fifty (50) feet. The ground of refusal to approve any plat submitted in accordance with the provisions of the preceding section shall be stated upon the record of the county commissioners and within sixty (60) days thereafter the person submitting any plat which the county commissioners have refused to approve may file a petition in the court of common pleas of the county wherein the land described in said plat is situated to review the action of the county commissioners."

Your attention is directed to the definition of a plat, found in Words and Phrases, Vol. 32, p. 630:

"A plat is a subdivision of land into lots, streets and alleys, marked upon the earth, and represented on paper; and hence the making and platting of it implies that the land had been surveyed, and that such survey was marked on the ground, so that the streets, blocks, and lots could be identified."

It is clear from the above quoted statutes that no duty arises on the part of the county commissioners until such time as a plat is submitted; that thereafter it becomes the duty of the county commissioners to note thereon the date of submission. Are they required to take any further action? Must they approve or refuse to approve said plat? The answer is found in that part of Section 3583-1, *supra*, as follows:

"and the approval of the county commissioners required by the preceding section or the refusal to approve shall take place within 30 days thereafter; otherwise such plat shall be deemed to have been approved and shall thereafter be entitled to be recorded as if bearing such approval."

At this point it should be said that the express power granted to the board are those powers of approving, refusing to approve, or taking no action whatsoever on the plat submitted. The statute further discloses that the county commissioners may adopt general rules and regulations governing plats and subdivisions of land falling within their jurisdiction.

In Bouvier's Law Dictionary (Student's edition,) 1934, at page 465, "General Rule" is defined as:

"Standing orders of a court for the regulation of its practice.
See General Orders."

It is further said in Bouvier, *supra*, at page 465, that General Orders are:

"Orders or rules of court, entered for the guidance of practitioners and the general regulation of procedure, or in some branch of its general jurisdiction; as opposed to a rule or an order made in a particular case. The rules of court."

It has been noted that the above definition relates to courts, however, for the purposes of the instant question, such definition may well apply to the general rules of the county commissioners adopted for the purpose of governing plats.

In a recent opinion of mine, Opinions of the Attorney General No. 1209, rendered November 16, 1949, in the second branch of the syllabus I held:

"The duty of maintenance of improved roads or streets in platted territory outside of municipalities rests with the trustees of the township in which such roads or streets are located."

Since there is no statutory duty on the part of the county commissioners to maintain streets and alleys within the subdivision after the acceptance of such plat, I must conclude that any rules and regulations adopted can only be those that would aid the dedicator in preparing such a plat and also to assist the county commissioners in making a final determination as to whether such plats would be approved or rejected, that is, all rules would be conditions precedent to an approval or refusal of same.

Precedent conditions are defined in Bouvier's Law Dictionary, *supra*, at page 203:

"* * * those which are to be performed before the estate or the obligation commences, or the bequest takes effect. * * *"

It is true that the statute says that the county commissioners may secure and provide for the coordination of streets and alleys with existing

county roads and highways, however, in view of what has previously been said, such provision should be complied with before accepting such plat. If such is not done, there is no doubt that such failure on the part of the dedicator could be grounds for refusal to approve by the county commissioners. The word "secure," as used in the statute, can only be given the following meaning as defined in Webster's Unabridged Dictionary:

"To make sure or certain, to put beyond doubt or hazard."

In view of the foregoing, you are therefore advised that county commissioners are without authority, pursuant to Section 3583-1, General Code, to require a dedicator of platted lands to post bond as a guarantee of full performance of requirements set up by the county commissioners.

Respectfully,

HERBERT S. DUFFY,
Attorney General.