

OPINION NO. 86-093**Syllabus:**

An individual who purchases a lot after the preparation of the tax duplicate on the first day of October is not prohibited from dividing the tract into smaller lots by means of several conveyances prior to the preparation of the next tax duplicate on the first day of the following October, provided that he complies with such provisions of R.C. Chapter 711 and local subdivision regulations as may be applicable.

To: John A. Pfefferle, Erie County Prosecuting Attorney, Sandusky, Ohio
By: Anthony J. Celebrezze, Attorney General, December 10, 1986

I have before me your request for an opinion on the question whether the provisions of R.C. Chapter 711 or of subdivision regulations promulgated by a regional planning commission prevent an individual from dividing a lot when the individual purchased the lot after the preparation of the tax duplicate on the first day of October of one year, but prior to the preparation of the next tax duplicate on the first day of October of the following year.

As I understand your request, the issue involves a property owner who purchased a tract of land in November of one year and attempted in January of the following year to divide the tract into smaller lots by means of several conveyances. The planning commission refused to approve the division of land because the property owner had purchased his property after preparation of the tax duplicate in October of the year in which he purchased the property, see generally 1986 Op. Att'y Gen. No. 86-021, and because R.C. 711.001(B)(1) defines "subdivision" as the "division of any parcel of land shown as a unit or as contiguous units on the last preceding tax roll" (emphasis added). The position of the planning commission was apparently that a property owner may not subdivide his property until he has owned it long enough to be listed as owner on the tax duplicate and has made at least one tax payment on the property. I disagree with the position taken by the planning commission.

The statutory language on which the planning commission relied appears in R.C. 711.001(B), as follows:

(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, 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 local planning commission adopts a regulation requiring a subdivision of land effected by an instrument of conveyance to be platted, then such subdivision must be platted in accordance with the commission's regulations and R.C. Chapter 711. See R.C. 711.10; R.C. 711.40; 1953 Op. Att'y Gen. No. 3285, p. 654. See also R.C. 711.001(A) (defining "plat" as "a map of a tract or parcel of land"). It is my understanding that the local planning commission in question has adopted a regulation which requires a subdivision created by an instrument of conveyance to be platted.

R.C. 711.10 authorizes county and regional planning commissions to adopt rules governing plats and subdivisions and provides:

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 the county or region...shall be recorded until it is approved by the county or regional planning commission and the approval is endorsed in writing on the plat....The ground of refusal of approval of any plat submitted, including citation of or reference to the rule violated by the plat, shall be stated upon the record of the commission.

See R.C. 711.13 (whoever willfully transfers a parcel or tract from, or in accordance with, a plat of a subdivision before the plat is recorded shall pay a forfeiture).

There are limited circumstances, however, under which a planning commission may approve a proposed division of land without plat. R.C. 711.131 states:

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.)

Approval without plat pursuant to this provision is available when a proposed division of a parcel of land involves "no more than five lots after the original tract has been completely subdivided." The term "original tract," as used in R.C. 711.131, has been construed to refer to a contiguous quantity of land held by one person, or in common ownership. See 1984 Op. Att'y Gen. No. 84-073.

Pursuant to R.C. 711.121, "[t]he county auditor and the county recorder shall not transfer property or record deeds or leases which attempt to convey property contrary to the provisions of [R.C. Chapter 711]." An attempted conveyance of land is contrary to the provisions of R.C. Chapter 711 for purposes of R.C. 711.121 where the attempted conveyance would create a subdivision, as defined in R.C. 711.001, and "the grantor has failed to comply with a rule, promulgated by a local authority...by the terms of which rule the making and recording of a plat of such subdivision is required." 1953 Op. No. 3285 (syllabus, paragraph four).

The definition of "subdivision" set forth in R.C. 711.001(B)(1) names "the last preceding tax roll" as the reference for determining whether a parcel of land was shown "as a unit or as contiguous units." The term "tax roll" is not defined for purposes of R.C. 711.001 and is not used elsewhere in the Revised Code. The regulations adopted by the planning commission in question construe the term "tax roll" as meaning the tax duplicate prepared by the county auditor and delivered to the county treasurer on the first day of October. See R.C. 319.28. The tax duplicate is an exact copy of the general tax list prepared and retained by the county auditor. See R.C. 319.28. "These two terms, 'tax list' and 'duplicate,' are used interchangeably...The statute provides that the tax list and duplicate shall always correspond exactly with each other." Fearon Lumber & Veneer Co. v. Robinson, 1 Ohio App. 209, 212-13 (Lawrence County 1913). See R.C. 319.35; Bernhard v. O'Brien, 97 Ohio App. 359, 126 N.E.2d 349 (Hamilton County 1953); Black's Law Dictionary 1311 (5th ed. 1979) (defining a "tax roll" as "the official record maintained by cities and towns listing the names of taxpayers and the assessed property"). See generally 1971 Op. Att'y Gen. No. 71-083 at 2-286 (referring to R.C. 711.001(B)(1) and stating: "[s]uch a tax list must...be completed annually by the county auditor on or before the first day of October").

The definition of "subdivision" appearing in R.C. 711.001(B)(1) is not concerned with the name of the property owner. The focus on the property itself, rather than on the owner, is consistent with Ohio real property law. Under Ohio law, "[r]eal property taxes are levied against the property itself and payment thereof cannot be enforced as a personal obligation against the owner or a lessee of such property." 1943 Op. Att'y Gen. No. 5841, p. 89 (syllabus, paragraph three). In real property taxing statutes, "[t]he name of the owner, like the description of the property, now seems to be used primarily as a means of identification." 1943 Op. No. 5841 at 95. See R.C. 711.104; Cincinnati College v. LaRue, 22 Ohio St. 469, 477 (1872) ("[t]he taxes are levied in respect to or on account of the property, in whosoever's name it may be entered on the duplicate"). See generally 1986 Op. Att'y Gen. No. 86-028 (syllabus, paragraph two) ("[a] county auditor has a mandatory duty to transfer real property on the tax list pursuant to R.C. 319.20 if the instrument of conveyance contains a legally sufficient description, even though the

grantor's name shown on the instrument of conveyance does not correspond to the name in which the property stands on the tax list"). The total value of real property as listed and assessed for taxation "remains the same from the time the general tax lists for one year come into being until the general tax lists for the next year come into being." 1959 Op. Att'y Gen. No. 32, p. 1 at 7. Cf. R.C. 319.35, R.C. 319.39, and R.C. 5713.19-.21 (governing the correction of errors on the tax list and duplicate). See generally 1966 Op. Att'y Gen. No. 66-089. R.C. 5713.18 states:

When any person lays out a municipal corporation, any addition thereto, or any subdivision of any lot or tract of land before the plat thereof is recorded, he shall present it to the county auditor, who shall assess and return the taxable valuation of each lot or parcel of land described in such plat in the same manner as other such lots or parcels are valued. Thereupon such lots or parcels shall be entered on the tax list in lieu of the land included therein.

See Mitchell & Watson v. Treasurer, 25 Ohio St. 143 (1874).

R.C. 711.001(B)(1) adopts a definition of "subdivision" that is in accord with this statutory scheme. If a parcel was shown as a unit or as contiguous units on the last preceding tax roll, its division into parcels, sites, or lots, as described in R.C. 711.001(B)(1), constitutes a subdivision, regardless of whose name appeared as taxpayer on the tax duplicate delivered to the treasurer on October first. See generally Op. No. 86-021.

It should be noted that provision is made for changing the name of the owner on the tax list. R.C. 319.20 states, in part:

After complying with section 319.202 of the Revised Code and on application and presentation of title, with the affidavits required by law, or the proper order of a court, bearing the last known address of the grantee, or of any one of the grantees named in the title, and a reference to the volume and page of the recording of the next preceding recorded instrument by or through which the grantor claims title, the county auditor shall transfer any land or town lot or part thereof, minerals therein, or mineral rights thereto, charged with taxes on the tax list, from the name in which it stands into the name of the owner, when rendered necessary by a conveyance, partition, devise, descent, or otherwise. If by reason of the conveyance or otherwise, a part only of a tract or lot, minerals therein, or mineral rights thereto, as charged in the tax list, is to be transferred, the auditor shall determine the tax value of the part of a tract or lot of real estate, minerals therein, or mineral rights thereto, so transferred, and the value of the remaining part compared with the value of the whole.

Whenever a part only of a tract or lot of real estate has been transferred by the auditor and such tract or lot bears unpaid taxes, penalties, interest, or special assessments, the unpaid taxes, penalties, interest, or special assessments shall immediately be apportioned, upon demand or request by the transferee or remaining owner....

This section does not change the total amount of taxes, special assessments, or other charges as originally levied, or the total amount of the balance due. The auditor shall certify such apportionments to the county treasurer.

....
The auditor shall endorse on the deed or other evidences of title presented to him that the proper transfer of the real estate described in such deed has been made in his office or that it is not entered for taxation, and sign his name to such deed. The address of the grantee, or any one of the grantees, set forth in the deed or other evidences of title shall be entered by the auditor on his transfer sheets and on the general tax list of real property prepared by him pursuant to section 319.28 of the Revised Code. (Emphasis added.)

See generally 1974 Op. Att'y Gen. No. 74-100 at 2-409 ("[i]n the event that an entire tract is sold, the law leaves the matter of apportionment of the taxes between the seller and the buyer to a private agreement of the interested parties. When, however, any part of a tract or lot of real estate is sold, an apportionment of the taxes between the transferor and transferee is expressly authorized by law"); 1974 Op. Att'y Gen. No. 74-047; 1932 Op. Att'y Gen. No. 4177, vol. I, p. 410. R.C. 319.35 provides:

From time to time the county auditor shall correct all clerical errors which he discovers in the tax lists and duplicates in the name of the person charged with taxes or assessments, the description of lands or other property, the valuation or assessment of property or when property exempt from taxation has been charged with tax, or in the amount of such taxes or assessment, and shall correct the valuations or assessments on the tax lists and duplicates agreeably to amended, supplementary, or final assessment certificates. If the correction is made after a duplicate is delivered to the county treasurer, it shall be made on the margin of such list and duplicate without changing any name, description, or figure in the duplicate, as delivered, or in the original tax list, which shall always correspond exactly with each other.

Similar provisions appear in R.C. 5713.19. See R.C. 319.39. See generally Neave Building Co. v. Brooks, 9 Ohio C.C. 151 (Hamilton County 1895); Op. No. 66-089. The facts outlined in your request indicate that the owner of property had changed since preparation of the October first tax list, but do not indicate any change in the description, valuation, or assessment of the parcel of land in question. A change in the owner does not, in itself, affect the description of property on the tax list. If a parcel is shown as a unit or as contiguous units, its division constitutes a "subdivision" under R.C. 711.001(B), even if the owner has changed.

In response to your question, it should, further, be noted that the definition appearing in R.C. 711.001(B)(1) does not, in itself, operate to permit or restrict land conveyances. Instead, it serves to define the types of divisions that constitute "subdivisions" and are subject to statutes and regulations governing subdivisions. Divisions which do not fall within the definition of "subdivision" are not subject to

such statutes and regulations. See generally 1985 Op. Att'y Gen. No. 85-004 (when a division of a tract into parcels does not constitute a "subdivision" for purposes of R.C. Chapter 711, a local planning authority may not require the owner to file a plat); 1963 Op. Att'y Gen. No. 358, p. 404. If, for some reason the transaction in question were found not to constitute a "subdivision," as that term is defined in R.C. 711.001(B), it would be exempt from statutes and regulations governing subdivisions. Particular conveyances would not, however, be prohibited on the basis that they were not part of a subdivision; they would simply be exempt from provisions governing subdivisions.

As discussed above, a local planning commission is authorized to adopt rules implementing the provisions of R.C. Chapter 711. See R.C. 711.10. Such a commission is not, however, authorized to vary the definition of "subdivision" appearing in R.C. 711.001(B) and the meaning of that word as it is used throughout R.C. Chapter 711. See generally 1981 Op. Att'y Gen. No. 81-075; 1963 Op. No. 358. I am aware of no basis on which such a commission may adopt regulations that would prohibit the conveyance of land for the reason set forth in your letter.

It is, therefore, my opinion, and you are hereby advised, that an individual who purchases a lot after the preparation of the tax duplicate on the first day of October is not prohibited from dividing the tract into smaller lots by means of several conveyances prior to the preparation of the next tax duplicate on the first day of the following October, provided that he complies with such provisions of R.C. Chapter 711 and local subdivision regulations as may be applicable.