

## OPINION NO. 1103

## Syllabus:

Under Section 971.02, Revised Code, land need not be platted to be "laid out in lots" but must be delineated by map or survey or marked off by other means into portions or parcels.

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To: James O. Gossett, Ashland County Pros. Atty., Ashland, Ohio  
By: William B. Saxbe, Attorney General, June 4, 1964

Your request for my opinion reads as follows:

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"The facts in this case are that a man living in the country, (sic) outside a municipal corporation, owns approximately five acres, and a neighboring farmer has complained to the township trustees concerning his failure to build a line fence.

"Upon a hearing by the trustees to require each to build his share, the owner of the five acres displayed a map of his premises drawn some three to four years previous showing that the premises had been laid out into lots. This map or plat is not and has not been recorded with the Ashland County Recorder, however, one lot containing .7 acres has been sold off from the five acres.

To date, there is one set of buildings on the five acres.

"The question is, does the fact that a map has been drawn showing the five acres to be laid out in lots prevent the operation of the partition fence law?

"\* \* \* \* \* \* \* \*"

Section 971.02, Revised Code, reads in part:

"\* \* \* Sections 971.01 to 971.37, inclusive, of the Revised Code do not apply to the enclosure of lots in municipal corporations, or of lands laid out into lots outside municipal corporations, or affect sections 4959.02 to 4959.06, inclusive, of the Revised Code, relating to fences required to be constructed by persons or corporations owning, controlling, or managing a railroad."

The language of this section which appears to be dispositive of your question is "lands laid out into lots."

The word "lot" has been separately defined as any portion, piece or division of land. Lehmann v. Revell, 354 Ill. 262, 188 N.E. 531. In Backenheimer v. Palm Springs Management Corp., 116 Cal. App. 2d, 580, 254 P. 2d, 153, it was held that a lot includes any portion, piece or division of land and is not limited to parcels or land laid out into blocks and lots regularly numbered and platted.

The term "laid out" has been interpreted to mean surveyed or marked off, Flint v. Long, 12 Wash. 342, 41 P. 49, and has been distinguished from the word "platted." In re Smith's Estate, 51 Minn. 316, 53 N.W. 711.

From these definitions and from an examination of its use in Section 971.02, supra, I am of the opinion that the language "laid out into lots" means to delineate by map or survey, or other means, pieces or portions of land. It includes but is not synonymous with or limited to, platted land.

My conclusion is strengthened by the conclusion of a predecessor in office expressed in Opinion No. 6672, Opinions of the Attorney General for 1944, which considered the meaning of the language "lots in municipal corporations" used in Section 5908, General Code, the forerunner of present Section 971.02, Revised Code. It was held at page 51:

"This section, with some change in phraseology, but none in meaning, was carried into the Revised Statutes as Section 4239. In 1904 it was amended to read substantially as Section 5908, General Code, now reads. Some slight changes were made by the Codifying Commission which prepared the General Code, but they in no way affected the meaning of the language used.

"In the original enactment, therefore, the words 'lots in cities and villages' were not used in association with the words 'lands laid out into lots outside of municipal corporations.' The 1904 amendment did not, in my opinion, change the meaning of the word 'lots' as used in the original enactment and such word continues at the present time to have the same meaning in Section 5908, General Code, as it had in the Act of 1859. The word 'lot' has various meanings and is often used in the sense of being a parcel of unplatted real estate, and such is the meaning which I believe it must be given as used in the Act of 1859. I therefore believe that the words 'lots in municipal corporations' as used in Section 5908, General Code, refer to any land in a municipal corporation, whether or not it has been platted."

I am of the opinion, then, that Sections 971.01 to 971.37, inclusive, Revised Code, do not apply to land which has been delineated by map into pieces or portions or lots. I am of the further opinion, however, that laying out land in lots requires some form of publication. Publication need not be formal or made in any particular manner but, for instance, may be through the act of having the land surveyed or by the actual sale of a lot or lots. It is necessary only that there be some declaration or overt act by which the public -- whose interest is in the operation of the statute -- will be made aware that the land has in fact been laid out in lots. Whether particular land has been "laid out into lots" within the meaning of Section 971.02, supra, is of course a question of fact to be answered by the board of township trustees in the first instance.

You have asked secondly whether the answer is the same if the lots laid out do not comply with a township zoning ordinance because they are too small for residential buildings.

The regulation of building and land use in the unincorporated territory of a township is authorized in Chapter 519, Revised Code. It is clear that the township zoning law and the partition fence law are not laws in pari materia and should not be construed in reference to each other. An action to prevent violations, actual or prospective, of zoning regulations is authorized in Section 519.24, Revised Code. A violation or a prospective violation of a township zoning regulation adopted pursuant to Chapter 519, Revised Code, can have no direct affect on the operation of the exclusion from the partition fence law contained in Section 971.02, supra. It may have some collateral significance, however, if there is a question whether lots have actually been laid out.

It is, therefore, my opinion and you are advised that:

Under Section 971.02, Revised Code, land need not be platted to be "laid out in lots" but must be delineated by map or survey or marked off by other means into portions or parcels.