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## SYLLABUS:

1. The County Commissioners of a county cannot under Chapter 711, Revised Code, require a land owner to file a plat for a subdivision where every parcel of land to be conveyed or retained after the division will exceed five acres in size.

2. The County Commissioners of a county cannot require a land owner to dedicate streets, right-of-ways, etc., in an area where property is being divided that is specifically exempted from the definition of a subdivision under the terms of Section 711.001, Revised Code.

Columbus, Ohio, July 1, 1963

Hon. John G. Peterson  
 Prosecuting Attorney  
 Greene County  
 Xenia, Ohio

Dear Sir:

I have before me your request for my opinion, reading in pertinent part as follows:

“This is a request for an opinion relative to the interpretation of Revised Code 711, relative to the platting of lands located outside a municipal corporation within Greene County, Ohio. Some background briefly is as follows: A local building developer is seeking to have recorded with our recorder approximately ten (10) tracts of land each of which exceeds five (5) acres per tract. The land will be sold to private individuals and they in turn will build residence thereon. Our Planning Commissioner has taken the attitude that he will not permit the tracts to be recorded or transferred until dedication of streets has been made within the subdivision plus a proper platting of said development into respective lots.

“Therefore, this is a request that you render my office an opinion relative to these questions. Specifically, can our County Commissioners and/or Planning Commission require this subdivision to be platted into lots in as much as each tract does exceed five (5) acres and further, can the developer be required to dedicate streets, right-of-ways, etc.

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Chapter 711, Revised Code, is entitled "Plats" and is devoted to the subject of the platting of land by the proprietor of the said land. To determine when an owner of property located in a county more than three miles from a city must "Plat" his land, comply with the requirements of Chapter 711, and have approval of the County Commissioners I must first look at Section 711.05, Revised Code, where it states that:

"Upon the *submission of a plat* for approval, in accordance with section 711.04 of the Revised Code, the board of county commissioners shall certify thereon the date of such submission, and the approval of the board required by such section or the refusal to approve shall take place within thirty days thereafter or such further time as the applying party may agree to; otherwise such plat is deemed approved and may be recorded as if bearing such approval. The board may adopt general rules and regulations governing *plats and subdivisions* of land falling within its jurisdiction, to secure and provide for the co-ordination 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 shall not impose a greater minimum lot area than 4800 square feet. \* \* \*" (Emphasis added)

The above code section gives the County Commissioners authority to adopt rules and regulations governing plats and subdivisions, but before their rules can apply there must first be the submission of a plat for approval or there must be a "subdivision" to apply the rules to.

Section 711.01, Revised Code, provides that:

"Any person *may* lay out a village, or subdivision or addition to a municipal corporation, by causing the territory to be surveyed, and by having a plat of it made by a competent surveyor. \* \* \*" (Emphasis added)

It is apparent from your letter that the owner in question has not "elected" to lay out a subdivision as specified; thus Section 711.01, Revised Code, does not apply in this case.

Section 711.001, Revised Code, defines "plat" and "subdivision" as follows:

"(A) 'Plat' means a map of a tract or parcel of land.

“(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*; or

“(2) The improvement of one or more parcels of land for residential, commercial or industrial structures or groups of structures involving the division or allocation of land for the opening, widening or extension of any street or streets; except private streets serving industrial structures; the division or allocation of land as open spaces for common use by owners, occupants or lease holders or as easements for the extension and maintenance of public sewer, water, storm drainage or other public facilities.”  
(Emphasis added)

The legislature in writing the definition of the word “subdivision” has departed somewhat from the normal use of the word but this is their right by law and the specified definition must be used in Chapter 711, wherever possible.

In 50 Ohio Jurisprudence 2d, Statutes, Section 178, page 153, I find the following:

“It is firmly established that the lawmaking body’s own construction of its language, by definitions of the terms employed, should be followed in the interpretation of the act or section to which it relates and is intended to apply. Indeed, there is no better way to determine the intent and purpose of the legislature than by its own definition of the language used. Accordingly, any provision in a statute which declares its meaning is authoritative and in many cases will have controlling weight. In fact, it has been held that where words are defined in a statute the court is bound by the legislative definition.

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In applying the legislature’s definition of “subdivision” to the various sections of Chapter 711, Revised Code, and in interpreting these sections, any doubt as to meaning must be resolved

in favor of the property owner since a private property right is involved.

See 50 Ohio Jurisprudence 2d, Section 289, page 273 :

“A strict construction is generally accorded statutes which impose restrictions upon the use of private property, which regulate or restrain the disposition thereof, which, in general, interfere with private property rights, or which permit the summary divestiture of title to property. Exemptions from such restrictive provisions are, on the other hand, liberally construed. And, in such cases, all doubts are resolved in favor of the property owner, and the scope of such statutes is not to be extended to include limitations not therein clearly prescribed.”

Giving full credit to the definition of “subdivision” as written by the legislature and after careful reading of Section 711.001, Revised Code, I find that not only is the property owner in question not required to file a plat, but in neither of the two branches of the definition is his proposal considered as a “subdivision.”

*None* of his lots is less than five acres in size, and the division or partition of his land into parcels of more than five acres *does not* involve any new streets or easements of access.

A former Attorney General when asked a similar question, and after reviewing the identical language of Sections 711.001 and 711.01, Revised Code, said in Opinion No. 3285, Opinions of the Attorney General for 1953, at page 654 :

“1. A ‘subdivision,’ as defined in Section 711.001, Revised Code, may be created either (1) by a conveyance of a part of a single parcel of land whereby either the part conveyed or the part remaining is less than five acres, or (2) by a survey and plat thereof by an owner who elects to ‘lay out a village, or subdivision or addition to a municipal corporation’ as provided in Section 711.01, Revised Code.”

This branch of the syllabus was affirmed and followed in Opinion No. 3343, Opinions of the Attorney General for 1953 and in Opinion No. 1921, Opinions of the Attorney General for 1960.

I agree with and affirm the conclusions in the above syllabus. The answer to your first question, therefore, is in the negative.

Your second question is concerned with whether or not the county commissioner may require the land owner in question to dedicate streets, right-of-ways, etc.

I have been unable to find any Ohio law or provision in Chapter 711, Revised Code, which would require such a private property owner as we have been discussing to dedicate any of his land to public streets, etc.

Inasmuch as the land owner in question need not file a plat because he has not "subdivided" as defined in Chapter 711, then he likewise need not comply with any of the requirements of the said Chapter and could not be required to dedicate any of his land to the local government for streets, etc.

It has been suggested in the papers submitted with your request that Section 711.131 applies here and the County Commissioners have relied upon it.

It is enough to say that Section 711.131, Revised Code, clearly is a relaxation by the legislature of certain requirements imposed earlier in Chapter 711. This section clearly allows certain supposedly covered "subdivisions" exemption from platting if several conditions are met. Section 711.131, Revised Code, reads in part as follows:

"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.  
\* \* \*"  
(Emphasis added)

This section provides additional exceptions to the requirements of platting and does not pertain to this case.

Answering your specific questions, it is my opinion and you are advised that:

1. The County Commissioners of a county cannot under Chapter 711, Revised Code, require a land owner to file a plat for a

subdivision where every parcel of land to be conveyed or retained after the division will exceed five acres in size.

2. The County Commissioners of a county cannot require a lan owner to dedicate streets, right-of-ways, etc., in an area where property is being divided that is specifically exempted from the definition of a subdivision under the terms of Section 711.001, Revised Code.

Respectfully,  
WILLIAM B. SAXBE  
Attorney General