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1. MUNICIPALITY—DEDICATION OF LANDS FOR USE AS PUBLIC ROADS—STATUTORY AUTHORITY TO COUNTY COMMISSIONERS—SECTION 5553.31 R. C.
2. AUTHORITY OF PLANNING COMMISSION—TO REQUIRE CONDITION PRECEDENT TO ITS APPROVAL OF PLOT—COMPLIANCE WITH RULES REGULATING SIZE OR AMOUNT OF LAND FOR PARK PURPOSES.

SYLLABUS:

1. Section 5553.31, Revised Code, now provides the sole statutory method by which lands outside municipalities may be dedicated for use as public roads and streets, and thus no dedication of such lands can be effected without the prescribed action by the county commissioners.

2. A county or regional planning commission may, under the terms of Section 711.10, Revised Code, require, within the limits of its territorial jurisdiction, as a condition precedent to its approval of a plat, compliance with rules reasonably regulating the size of lots or requiring the dedication of a reasonable amount of land for park purposes.

Columbus, Ohio, September 15, 1956

Hon. Alva J. Russell, Prosecuting Attorney
Summit County, Akron, Ohio

Dear Sir:

I have before me your request for my opinion which reads as follows:

“The Summit County Planning Commission and the Summit

County Commissioners desire to amend its rules and regulations governing the acceptance of plats. Its rules and regulations, adopted pursuant to Sections 711.10 and 711.101 R. C., now provide for the construction and maintenance of streets and roads together with other requirements concerning street arrangement, etc. The rules and regulations further provide for the approval and signing of the record plat by the Planning Commission and the County Commissioners. They are considering amending the rules to provide that the approval and signing of the record plat by the Commission only will be required, thereby making unnecessary the approval and signing by the County Commissioners. Would the absence of the approval and signing of the record plat by the County Commissioners have the affect of preventing the streets and roads in the subdivision from becoming duly established public roads?

“Stated otherwise: Is the approval of the County Commissioners to a record plat necessary to constitute an establishment of the streets and roads in the subdivision for public use, notwithstanding the approval of the plat by the Planning Commission and the subsequent acceptance of the streets and roads by the County Engineer as provided by Section 711.091 R. C.?”

“The Planning Commission further wishes to know if Section 711.10 R. C., providing for rules for ‘recreation, light, air, and for the avoidance of congestion of population,’ empowers it to promulgate rules and regulations which would require the subdivider to parcel out his subdivision into lots larger in size than is required by the zoning ordinance of the township in which the subdivision is situated, and which would require the subdivider to donate land for park purposes.

“Otherwise stated: Does the Planning Commission have the power to regulate the size of lots in a subdivision and to require the donating of land for park purposes?”

In reply to your first question, I refer you to Section 711.04, Revised Code, as recently amended, and to the sections of the Revised Code and of the General Code which are superseded by the amended section.

Section 3583, General Code, provided in pertinent part:

“* * * 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, *upon the filing of any such plat for record the approval of the county commissioners endorsed thereon shall operate as an acceptance and confirmation of the dedication of the public highways, contained therein, * * **” (Emphasis added.)

When that section was in effect, roads or streets in platted territory outside of municipalities could be dedicated either pursuant to its provisions or pursuant to Section 6886, General Code (Section 5553.31, Revised Code), the statute providing generally for the dedication of lands for public roads which reads as follows :

“Any person may, with the approval of the board of county commissioners, dedicate lands for road purposes. A definite description of the lands to be dedicated with a plat of such lands thereto attached and signed by the party dedicating such lands, with the approval and acceptance of the board indorsed thereon, shall be placed upon the proper road records of the county in which such road is situated. If the lands so dedicated contemplate a change in an existing road, the same proceedings shall be had thereon, after the board by proper resolution approves and accepts the lands for such purpose, as are provided in cases where the board by unanimous vote declares its intention to locate, establish, widen, straighten, vacate, or change the direction of a road without a petition therefor, but otherwise the proposal to dedicate lands for road purposes, together with the acceptance of the grant by the board, constitutes the lands so dedicated a public road without any further proceedings thereon.”

See Opinion No. 1209, Opinions of the Attorney General for 1949, page 835. You are aware, of course, that a common-law method of dedication also existed and does exist.

Under the recodification, Section 3583, General Code, became Section 711.04, Revised Code. On October 18, 1953, *amended* Section 711.04, Revised Code, came into effect. It read, in pertinent part :

“* * * * * * * * *

“The approval of a plat by the board of county commissioners shall *not* be deemed to be an acceptance of the dedication of any public street, road, or highway dedicated on such plat.

“* * * * * * * * *”

(Emphasis added.)

Thus, one alternative was eliminated and the only statutory method of dedication remaining in effect was that prescribed in Section 5553.31, Revised Code. In other words, dedication could no longer be completed solely by approval of a plat by the county commissioners.

In October 1955, a revision of the statutes involved here came into effect. Your question, as I understand it, is whether the new and amended

sections, particularly Section 711.091, Revised Code, provide a new alternative—that is, can a completed dedication be effected by acceptance by the engineer, in accordance with Section 711.091, Revised Code, without action by the county commissioners?

Under the revision, it is still true that county commissioners cannot accept or complete a dedication solely by approving a plat.

Section 711.041 provides :

“No plat certifying lands outside a municipal corporation may be recorded without the approval thereon of the board of county commissioners of the county wherein such lands are situated.

“The approval of a plat by the board of county commissioners shall not be deemed to be an acceptance of the dedication of any public street, road, or highway dedicated on such plat.

“This section does not apply to such plats as are required by section 711.09 or 711.10 of the Revised Code to be approved by a planning commission.”

Since, in your case, a county planning commission is in existence and has apparently adopted a plan for the county in accordance with Section 711.09, Revised Code, therefore, by the terms of its third paragraph, Section 711.041, Revised Code, does not operate. But even so, approval of the plat by the county commissioners does not constitute an acceptance and complete a dedication. With Section 711.041 in operation, such approval is expressly provided not to constitute an acceptance; without that section in operation, approval is not authorized to constitute acceptance; and in either case the mandatory language of Section 5553.31, Revised Code, applies.

You will note that by the terms of Section 711.10, Revised Code, approval of a plat by a county or regional planning commission does not constitute acceptance for dedication purposes of streets shown on a plat.

Does approval and acceptance by the engineer then effect a dedication? An examination of the language of Section 711.091, Revised Code, indicates that it does not. That section reads :

“The city or village engineer in the case of lands within a city or village, and the county engineer in the case of lands outside of a city or village, shall upon written request by the owner of the land upon which the street *has been constructed* check the *construction* and if the engineer finds that such street *has been constructed* in accordance with the specifications set forth on the

approved plat, and that such street is *in good repair*, then such finding, endorsed on the approved plat, shall constitute an acceptance of the street for public use by the city, village or county as the case may be, *provided such street has been theretofore duly dedicated.*" (Emphasis added.)

The engineer is to check a street which has been constructed. The statutory language does not provide for acceptance by the engineer of streets which have been platted but not constructed, yet there is no intent manifested anywhere in Chapter 711., or elsewhere, to limit the acceptance of platted streets to only those which have been already improved.

Further, you will note that the engineer's approval shall constitute acceptance for public use only when the street has been *theretofore duly dedicated*. Dedication is defined, as follows, in 17 Ohio Jurisprudence, 2d, 6:

"A dedication is a voluntary appropriation or gift of land to some public use, made by the owner of the fee, *and accepted for such use by or on behalf of the public.* * * *" (Emphasis added.)

16 American Jurisprudence, 377, states:

"* * * It is the act of acceptance which makes the dedication complete. * * *"

If, then, dedication consists of *both* offer and acceptance, and if the engineer's acceptance can take place only after dedication, that acceptance must be some form of acceptance other than that which is a constituent part of dedication. It may be that the engineer's inspection and acceptance is meant to provide a check on some performance, such as the improvement of streets, to which the proprietor of a plot has committed himself or which has been required of him by regulation. Such inspection and acceptance may be meant to discharge a proprietor's obligation on a performance bond. In any case, I am of the opinion that it is not that acceptance which is necessary to complete a dedication. Section 711.091, Revised Code, does not provide a method of effecting acceptance and a completed dedication alternative to the method provided in Section 5553.31, Revised Code.

Turning now to the second question of your request, I refer you to Section 711.10, Revised Code, which reads in pertinent part:

"* * *

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* * *

"Any such county or regional planning commission shall adopt general rules and regulations, of uniform application, gov-

erning 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 or regional 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*. Such rules and regulations may provide for the modification thereof by such county or regional planning commission in specific cases where unusual topographical and other exceptional conditions require such modification.

“* * *

* * *

* * *”

(Emphasis added.)

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.

You will note that Section 711.09, Revised Code, which is the analogous section concerned with municipal planning commissions, provides a limitation on the minimum lot area which may be required. Section 711.10, Revised Code, contains no such limitation.

In sum, I am of the opinion and you are advised that :

1. Section 5553.31, Revised Code, now provides the sole statutory method by which lands outside municipalities may be dedicated for use as public roads and streets, and thus no dedication of such lands can be effected without the prescribed action by the county commissioners.

2. A county or regional planning commission may, under the terms of Section 711.10, Revised Code, require, within the limits of its territorial jurisdiction, as a condition precedent to its approval of a plat, compliance with rules reasonably regulating the size of lots or requiring the dedication of a reasonable amount of land for park purposes.

Respectfully,

C. WILLIAM O'NEILL
Attorney General