

OPINION NO. 79-068**Syllabus:**

A board of county commissioners is without authority under R.C. 711.101 to promulgate a rule or regulation requiring approval of a plat by a board of township trustees before it may be filed with the office of the county recorder.

To: John E. Shoop, Lake County Pros. Atty., Painesville, Ohio
By: William J. Brown, Attorney General, October 16, 1979

Your request for my opinion reads, in pertinent part, as follows:

The Lake County Planning Commission has voted final approval, with stipulations, to a plat for a residential subdivision to be located within an unincorporated area of the county. As approved with stipulations, the subdivision plat complies in all ways with subdivision regulations adopted by the county pursuant to Section 711.101, Ohio Revised Code.

A dispute has arisen between the Planning Commission and the trustees of the township in which the subdivision is to be located regarding open space in the subdivision as required by the subdivision regulations. While the Planning Commission desires to set aside space for the common use as permitted by the regulations, the township trustees prefer to accept a fee-in-lieu of the open space required.

As a result of this dispute, the township trustees have refused to sign the final plat of the subdivision, and the plat as of this date remains unfiled.

You indicate that this situation has arisen as a result of regulations adopted by the board of county commissioners pursuant to R.C. Chapter 711. Those regulations provide, in part, as follows:

After the final plat has been approved by the Commission and signed by the Chairman or Secretary, the Township Trustees, County Engineer, Sanitary Engineer, Health District, County Prosecutor, the County Commissioners, and the necessary approvals endorsed in writing thereon, it may then be filed for recording in the office of the Recorder of Lake County, Ohio, as required by law.

Your precise question reads as follows:

May county subdivision regulations, adopted pursuant to Section 711.101, Ohio Revised Code, delegate authority to approve a subdivision, or, alternatively, authority to veto approval of a subdivision, to public officials or public bodies not mentioned in Section 711.101, Ohio Revised Code?

The regulations in question have been adopted by the board of county

commissioners. It is fundamental that county commissioners have only such powers as are expressly conferred upon them by statute and such implied powers as are essential to carry into effect the powers expressly granted. Elder v. Smith, 103 Ohio St. 369 (1921); Gorman v. Heuck, 41 Ohio App. 453 (Hamilton County 1931).

A board of county commissioners is authorized under both R.C. 711.05 and 711.101 to adopt rules and regulations governing plats and subdivisions. R.C. 711.05 reads, in pertinent part, as follows:

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. Where under the provisions of section 711.101 of the Revised Code the board of county commissioners has set up standards and specifications for the construction of streets, utilities, and other improvements for common use, such general rules and regulations may require the submission of appropriate plans and specifications for approval.

R.C. 711.101 provides, in part, as follows:

As to land falling within its jurisdiction or the jurisdiction of its planning commission, the legislative authority of a municipal corporation, or the board of county commissioners, may adopt general rules and regulations setting standards and requiring and securing the construction of improvements shown on the plats and plans required by sections 711.05, 711.09 and 711.10 of the Revised Code.

Such rules and regulations may establish standards and specifications for the construction of streets, curbs, gutters, sidewalks, street lights, water mains, storm sewers, sanitary sewers, and other utility mains, piping, and other facilities, may require complete or partial installation of such improvements, and may make such installation a condition precedent to the sale or lease of lots in a subdivision or the issuance of a building permit for the improvement of a lot, and may require in lieu of actual construction a performance agreement and the furnishing of a performance bond or other guarantee or security for the purpose of assuring the installation of such improvements deemed necessary or appropriate in the public interest

Such rules and regulations may require the submission of plans and specifications for the improvements set forth in this section for approval as a condition precedent to the approval of a plat required by sections 711.05, 711.09, and 711.10 of the Revised Code, and may require the actual construction or agreement or assurance of such construction as a condition precedent to the approval required under said sections.

Such rules and regulations may provide for the administration thereof by the regulating body or by a city, county, or regional planning commission having platting jurisdiction over the land affected and may provide for the modification thereof in specific cases, where unusual or exceptional factors or conditions require such modifications, by such body or commission.

The board of county commissioners may prepare such specifications and make such orders, inspections, examinations and certificates as are necessary to carry out the provisions of this section. The county engineer and the county sanitary engineer shall act in an advisory capacity to the board in preparing such specifications, orders, inspections, examinations, and certificates.

I am unable to find any provision in these sections that authorizes a board of county commissioners to adopt a regulation requiring the approval of a board of township trustees. The statute authorizes the board to delegate authority to administer its rules and regulations to a county or regional planning commission. The statute also permits the board to involve the county engineer or the county sanitary engineer in the preparation of specifications, orders, inspections, examinations and certificates. There is, however, no provision authorizing the board to delegate any of its authority to a board of township trustees. I must conclude, therefore, that the board of county commissioners is without such authority.

A similar conclusion was reached by one of my predecessors in 1960 Op. Att'y Gen. No. 1921, p. 733. The question there was whether a board of county commissioners could require the approval of the county health commissioner upon a plat before approval. The opinion concluded that R.C. 711.05 granted no authority for the board to require the approval of the county health commissioner before endorsing its approval of a plat. The opinion also recognized that the adoption of such a policy would amount to an impermissible delegation of authority by the board.

It is my opinion, therefore, and you are advised, that a board of county commissioners is without authority under R.C. 711.101 to promulgate a rule or regulation requiring approval of a plat by a board of township trustees before it may be filed with the office of the county recorder.