621

SYLLABUS:

When a city planning commission exercises jurisdiction over the territory within three miles of the city, as authorized by Section 711.09, Revised Code, and approves a subdivision plat which contains land set aside for parks, the recording of the plat shall be a sufficient conveyance to vest the fee simple title to the parks in the county in which the subdivision is situated.

Columbus, Ohio, November 5, 1963

Honorable Rex Larson
Prosecuting Attorney
Richland County
Mansfield, Ohio

Dear Sir:

Your request for my opinion points out that the City of Mansfield, Richland County, Ohio, has a planning commission and that this planning commission exercises jurisdiction over territory within three miles of the corporate limits. You also indicate that the city planning commission requires, as a condition of approval of the plats of any subdivision within a three-mile limit of the city, that the developer provide a certain minimal area for park purposes and that this requirement has resulted in the creation of a number of small tracts of land within the subdivisions. Further, you state that because of the tax consequences (presumably real estate taxes) the developers are anxious to dispose of these pieces of property designated as park areas on the plats and in some instances the developers have conveyed deeds to these pieces of property to the township within which the designated park areas exist. More particularly you state that:

> "We are in receipt of a request for opinion with which there was enclosed a warranty deed from the developer dated December 29, 1960, and by which there was attempted to be conveyed to the township certain lands. This instrument of conveyance used the following language in part, 'and being Lot designated as Park on the recorded plat of Willow Park Allotment and further described as follows: . . .' Following the description, this language occurs, 'But subject to easement and restrictions of record, including a permanent easement to the Willow Park Water

and Improvement Association to operate and maintain water wells and equipment in the areas designated on the recorded plat.'

"The plat of Willow Park Allotment reflects this 'Park.' Within the park there was a smaller area designated as 'Well Area,' with two, twenty foot easements leading across the park to such area. It is important to note that the deed of conveyance to the township noted above was mailed to the township trustees after recording and with no prior discussion or communication of any kind.

"The trustees posed the following questions:

'1. Is it possible to dispose of the park in Willow low Park to their Water Association?

'2. The developer wants an easement for another well. Can this be granted?

'3. Do the Trustees have to accept a recorded deed to a park area?' "

Before answering your questions, it is necessary to determine whether or not the township or the township trustees have the *power to acquire* title to the land designated as a park on the recorded plat.

Since this transaction occurred in 1960, the statutes then in effect must be considered.

Section 711.09, Revised Code, provided in part:

"Whenever a *city* planning commission adopts a plan for the major streets or thoroughfares and for the parks and other open public grounds of a city or any part thereof, *or for the territory within three miles of the corporate limits thereof* or any part thereof, except a part of such territory, lying within a municipal corporation, *then no plat of a subdivision of land within such city or territory shall be recorded until it has been approved by the city planning commission* and such approval indorsed in writing on the plat. If such land lies within three miles of more than one city, then this section shall apply to the approval of the planning commission of the city whose boundary is nearest to the land.

"* * * * * * * * *

"* * * *When a plan has been adopted as provided in this section the approval of plats shall be in lieu of the approvals provided for by any other section of the Revised*

Code, so far as territory within the approving jurisdiction of the commission, commissioner, or such legislative authority, as provided in this section, is concerned. *Approval of a plat shall not be an acceptance by the public of the dedication of any street, highway, or other way or open space shown upon the plat.*"

(Empasis added.)

Furthermore, Section 711.10, Revised Code, provides in part:

"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 such county or region, *other than land within a municipal corporation or land within three miles of a city as provided in section 711.09 of the Revised Code*, shall be recorded until it is approved by such county or regional planning commission and such approval is indorsed in writing on the plat. * * *"

(Emphasis added.)

These two sections, when read together, have been interpreted to mean that the city planning commission has exclusive jurisdiction over the territory within three miles of the corporate limits. The second branch of the syllabus in Opinion No. 3285, Opinions of the Attorney General for 1962, states:

"2. A city planning commission which has adopted a plan under Section 711.09, Revised Code, has exclusive jurisdiction as to the approval of plats in the city and in the city and in the area within three miles of the corporate limits thereof, excluding land in other municipal corporations, and the county planning commission has no jurisdiction as to that area."

This opinion approved and reaffirmed the conclusion reached in Opinion No. 847, Opinions of the Attorney General for 1929. Therefore, it is manifest that the planning commission of the City of Mansfield is the only planning commission that has the power to establish regulations for subdivisions and approve the plats for proposed subdivisions within three miles of the municipal limits. Further, this exclusive jurisdiction has been interpreted to allow the city planning commission to require the setting aside of reasonable amounts of land for park purposes, as a valid exercise of the police power granted to a municipality by Article XVIII, Section 3, of the Ohio Constitution. See Opinion No. 3166, Opinions of the

Attorney General for 1962, wherein the second branch of the syllabus states:

> "2. Under Section 711.09, Revised Code, a city planning commission may adopt a plan for the parks of the city or for the area within three miles of the corporate limits thereof, such plan designating what land will be set aside for park purposes; and may require, as a condition precedent to its approval of a plat, the dedication of a reasonable amount of land for park purposes."

However, Section 711.09, Revised Code, provides that:

> "* * * * * * * * *
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> "* * * *Approval of a plat shall not be an acceptance by the public of the dedication of any* street, highway, or other way or *open space shown upon the plat.*"
>
> (Emphasis added.)

Dedication is described in 17 Ohio Jurisprudence 2d, Dedication, Section 2, page 6, as:

> "* * * 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. It arises when the owner intends that his property shall be devoted to public use and opens it to the public, and the public accepts the same."

In addition, there are two methods of dedication recognized in Ohio, namely, the common law dedication which requires an intention on the part of the owner to make the dedication, an actual offer on the part of the owner, evidenced by some unequivocal act, to make the dedication, and the acceptance of such offer by or on behalf of the public. 17 Ohio Jurisprudence 2nd, *supra*, Section 22, at page 22. However, on the facts that you have presented, the offer of dedication was made to the township trustees, not to the municipal corporation or the county commissioners. The other method of dedication is termed statutory dedication and is made in conformity to the provisions of the statutes, and when so made requires no acceptance on the part of the public. 17 Ohio Jurisprudence 2nd, *supra*, Section 41, at page 48.

The two methods of statutory dedication are contained in Sections 711.07 and 711.11, Revised Code. However, since these park

areas are *not* located within a municipal corporation, Section 711.07, Revised Code, *supra*, is inapplicable.

Section 711.11, Revised Code, *supra*, provides:

> "The plats, mentioned in section 711.01 of the Revised Code, shall be a sufficient conveyance to vest a fee simple title of all such parcels of land as are therein expressed, named, or intended for public use, *in the county* in which the village is situated, for the uses and purposes therein named, expressed, or intended, and for no other use or purpose." (Emphasis added.)

However, it must be noted that the term "village" as herein used does not have the same meaning as it does when used in Article XVIII, Section 1, of the Ohio Constitution and Chapters 703 and 707 of the Revised Code.

In the Act of March 3, 1831, 29 Ohio Laws, 350, Vol. 2, Swan & Critchfield, 1482, Chapter 116, dealing with Town Plats, there were two separate sections dealing with the platting of lands. In Section VI, which was applicable to *a city or town corporate,* the statute provided for the vesting of the fee to public lands in the city or town corporate upon the filing of the plat for record. On the other hand, Section VIII, which referred to *towns*, provided for the vesting of the fee, by the recording of the plat, in the county in which the town was situated.

As stated by the Ohio Supreme Court in the case of *Babin* v. *Ashland*, 160 Ohio St., 328, at 333:

> "A casual reading of the provisions of Sections 6 and 8 of the Act of 1831 might indicate some inconsistency between them. For example, section 6 vested the fee 'in the city or town corporate' whereas section 8 vested that fee 'in the county in which the town is situated.' However, a reading of the act as a whole in an effort to find some reason for these apparent differences between section 6 and section 8 leads to the conclusion that two kinds of maps were dealt with. Section 6 dealt only with plats or maps of a 'city or town corporate' or a subdivision thereof and section 8 dealt with plats or maps of towns which were not incorporated."

In addition, upon a comparison of these sections, it is manifest that Section VI of the Act of 1831 was the predecessor of Section 711.07 of the Revised Code, and that Section VIII, *supra*, was the

predecessor of Section 711.11, *supra*. Consequently, when reading Section 711.11, Revised Code, *supra*, the term "village" as used therein must be construed to mean unincorporated areas or territory.

One of the earliest cases which dealt with this matter of land dedicated to public uses was *Walworth* v. *Collinwood*, 4 C.D., 503, 8 C.C., 477, Cuyahoga County Circuit Court, 1894. This case arose under Section VIII of the Act of 1831, 29 Ohio Laws, 350, Vol. 2, Swan & Critchfield, page 1484, which is a predecessor of Section 711.11, Revised Code. In this case, the court stated:

> "We think the construction to be given to this statute is that it embraces such a plat as was made here, of forty or fifty lots in a township which, if settled up by forty or fifty families, would make something of a village.
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> "Says the Century Dictionary: 'The word town is used also in the sense of a collection of dwellings'."
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> 4 C.D., at 504

Later, in Opinion No. 619, Opinions of the Attorney General for 1919, the meanings of the words "hamlet," "town," and "village" were under consideration in relation to statutes pertaining to dedication of lands and vacating dedicated lands. In this opinion, my predecessor stated at page 1106 in Volume II:

> "A mere reading of section 1536-62 indicates plainly that the words 'hamlet or village' as used in said section, refer to subdivisions of lands outside of municipal corporations; for in contrast to the words 'hamlet or village' the section itself contains the words 'subdivision or addition to any municipal corporation.' This meaning becomes even clearer when sections 1536-66 and 1536-69 are taken into consideration; for as above stated, section 1536-66 provided for the vesting of title to streets, alleys, etc., in the municipal corporation wherein was situated the land shown on the plat, leaving the meaning above stated as the only one which may be given the words 'hamlet or village' as used in section 1536-62, when said section is read with section 1536-69, providing for the vesting in the county in which the hamlet or village is situated, of title in trust to all parcels of land shown on the plat as being intended for public use.
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> "The earlier form of the sections above mentioned is found in Swan & Critchfield's Statutes (1860), Vol. 2, p.

> 1482, in a chapter entitled 'Town Plats,' and in that form the word 'town' was used where the words 'hamlet or village' later appeared, while the words 'city or town corporate' were employed in lieu of the words 'municipal corporation' as later adopted. The word 'town' as used in the earlier form was construed in *Walworth vs. Village of Collinwood,* 8 O.C.C. 477; 4 O.C.D. 503, to refer to a subdivision outside of a municipal corporation.
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> "The sections above referred to are still in force, with minor changes, and are now known as sections 3580 et seq. G.C., and while both in 1903 and at the present time they appeared as part of the municipal code, it is evident from the above observations that they make provision for the platting of lands without, as well as for those within, municipal corporations."

Therefore, it becomes apparent that the word village as used in Section 711.11, Revised Code, *supra,* includes the subdivision under consideration. Consequently, Section 711.11, Revised Code, *supra,* is applicable in this situation, and the fee simple title to the lands intended for parks was conveyed by operation of law to the county, for the uses and purposes therein named, expressed or intended, and for no other use or purpose. This constitutes a statutory dedication of the fee simple title to the county at the time that the approved plat was recorded in the county recorder's office, and, as such, the developer of the subdivision had no fee or title remaining in him and consequently the developer had nothing to offer or deed to the township.

As a result of this decision—that the fee simple title to the park areas within the subdivision is in the county—it becomes unnecessary to answer your questions.

Therefore, you are hereby advised that when a city planning commission exercises jurisdiction over the territory within three miles of the city, as authorized by Section 711.09, Revised Code, and approves a subdivision plat which contains land set aside for parks, the recording of the plat shall be a sufficient conveyance to vest the fee simple title to the parks in the county in which the subdivision is situated.

Respectfully,
WILLIAM B. SAXBE
Attorney General