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1. ROADS DESIGNATED ON PLAT OF SUBDIVISION—IT MUST BE SHOWN THEY ARE INTENDED FOR PUBLIC OR PRIVATE USE.
2. CITY PLANNING COMMISSION—FAILED TO ADOPT PLAN FOR MAJOR STREETS, PARKS AND OTHER PUBLIC GROUNDS—TERRITORY OUTSIDE CORPORATE LIMITS OF CITY BUT WITHIN THREE MILES—COMMISSION HAS NOT ACQUIRED JURISDICTION OVER APPROVAL OF PLATS OF LAND LOCATED WITHIN TERRITORY.
3. CITY PLANNING COMMISSION—NO ACQUIRED JURISDICTION OVER APPROVAL OF PLATS OF LAND OUTSIDE LIMITS OF MUNICIPAL CORPORATION—PREREQUISITE TO RECORDING OF PLATS—ACKNOWLEDGMENT BY OWNER—APPROVAL BOARD OF COUNTY COMMISSIONERS—SECTION 711.04 RC.

SYLLABUS:

1. The plat of a proposed subdivision must designate whether the roads shown thereon are intended for public or private use.
2. Where a city planning commission has failed to adopt a plan for the major streets, parks, and other public grounds, for the territory outside of the corporate limits of the city, but within three miles thereof, such planning commission has not acquired jurisdiction over the approval of plats of land located within such territory.
3. Where a city planning commission has not acquired jurisdiction over the approval of plats of land located outside the limits of the municipal corporation, it is prerequisite to the recording of plats of such land that they be acknowledged by the owner and approved by the board of county commissioners, in accordance with Section 711.04, Revised Code.

Columbus, Ohio, May 26, 1955

Hon. Ralph E. Carhart, Prosecuting Attorney
Marion County, Marion, Ohio

Dear Sir:

I have before me your request for my opinion on the following question:

Is the county recorder required to accept for record the plat and description of a proposed subdivision of land, located outside of the corporate limits of the city of Marion but within three miles thereof, which plat has been approved by that city's planning commission, where, (1) the plat does not designate the roads located thereon as public or private roads, (2) it does not contain an acknowledgment by the owner, and (3) the approval of the board of county commissioners has not been secured.

The pertinent sections with which we are here concerned are found in Chapter 711, Revised Code. Section 711.01 provides as follows:

"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. The plat shall particularly describe the streets, alleys, commons, or public grounds, and all in-lots, out-lots, fractional-lots, within or adjacent to such village. The description shall include the courses, boundaries, and extent."

It is to be noted that this section requires that the plat "particularly describe the streets, alleys, commons, or public grounds."

A subdivision may be created, however, although no part thereof is dedicated to public use. In re Sullivan, 27 N.P. (N.S.), 119.

It would therefore appear to be incumbent upon the owner of the land to designate clearly whether the roads shown upon the plat are intended for public or private use.

Apparently the problem with which you are most concerned involves the construction of Sections 711.04 and 711.09 of the Revised Code. Section 711.04 provides in part as follows:

"After a plat of a subdivision is completed, it shall be certified by the surveyor and acknowledged by the owner before an officer authorized to take the acknowledgment of deeds, which officer shall certify his official act on the plat. If any owner is a nonresident of the state, his agent, authorized by writing, may make such acknowledgment. Such plat, and if the execution is by agent, his written authority, shall thereupon be recorded in the office of the county recorder. 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. * * *

"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."

Under this section, it is prerequisite to the recording of the plat of a proposed subdivision of land, located outside of a municipal corporation, that the plat be certified by the surveyor and acknowledged by the owner. In addition, it is necessary to secure the approval of the board of county commissioners. The last paragraph of this section excepts these requirements in those cases where the approval of a planning commission is required by Sections 711.09 or 711.10 of the Revised Code.

Section 711.10 concerns the approval of a county or regional planning commission. You have indicated by your letter that neither of such commissions exists in Marion County, so that this section can have no bearing upon the questions which you have presented.

The first paragraph of Section 711.09, *supra*, provides as follows:

“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 village, 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.”

In Opinion No. 847, Opinions of the Attorney General for 1929, page 1302, my predecessor held, in construing then Sections 3583 and 3586-1, General Code, present Sections 711.04 and 711.09, Revised Code, that jurisdiction over the approval of plats of land located within three miles of the corporate limits of a municipal corporation, was exclusive with the city planning commission, and that the approval of the board of county commissioners was not required in addition thereto. The then Attorney General prefaced his opinion, however, with the following statement at page 1303:

“* * *, I will assume that in the municipalities to which you refer, the city planning commission has adopted a plan for the territory within three miles of the corporate limits thereof.”

This qualification was carried into the syllabus, which reads as follows:

“A city planning commission *which has adopted a plan for the territory within three miles of the corporate limits thereof, has exclusive jurisdiction of the approval of plats and maps for the territory within three miles of the corporate limits of such municipality.*” (Emphasis added.)

The question of whether the planning commission has, in fact, adopted a plan for the major streets, parks and other public grounds, for the territory within three miles of the corporate limits, and within which the proposed subdivision is located, is therefore of controlling importance.

Submitted with your request was Ordinance No. 5172 of the City of Marion, entitled “An ordinance dividing the municipality into districts for the limitation of uses of property.” This ordinance is concerned with the zoning of property within the municipality into residence, commercial, industrial and unrestricted districts. It does not refer to nor purport to adopt any plan for the general location of streets, parks or other public grounds. It is my further understanding that no such plan has been adopted for the area in which this proposed subdivision is located.

It therefore becomes necessary to determine whether the legislature intended that the adoption of a “zoning” ordinance would be sufficient to confer jurisdiction upon a city planning commission, over the approval of plats of land located within three miles of the limits of the municipality.

The terms “zoning” and “planning” are not identical in meaning. The following statement of the distinction between these terms was made in the case of *Seligman v. Belknap*, 288 Ky., 133, 135, 155 S. W. (2d) 735, 736:

“Broadly speaking, ‘planning’ connotes the systematic development of an area with particular reference to the location, character and extent of streets, squares, parks and to kindred mapping and charting. ‘Zoning’ relates to the regulation of the *use* of property—to structural and architectural designs of buildings; also the character of use to which the property or the buildings within classified or designated districts may be put.”

The intention of the legislature in requiring the owner of a proposed subdivision to secure the approval of a city planning commission, where the platted land lies within three miles of the limits of the municipality, was clearly to insure that the subdivision in no way conflicted with the general “plan” adopted by the planning commission for that territory. This

intention is manifest from the wording of Section 711.09 itself, the first paragraph of which refers to the adoption of "a plan for the major streets * * * parks and other open public grounds." In addition, this section confers upon the city planning commission the authority to adopt rules governing plats of land within its jurisdiction, and declares the intention of the legislature as well. The fourth paragraph of this section reads as follows:

"Any planning commission, platting commission, or legislative authority of a village may adopt general rules and regulations governing plats and subdivisions of land falling within its jurisdiction *in order to secure and provide for the co-ordination of the streets within the subdivision with existing streets and roads or with the plan or plats of the municipal corporation*, 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 or safety but shall not impose a greater minimum lot area than 4800 square feet. * * *" (Emphasis added.)

I cannot therefore accede to the proposition that the adoption of a zoning ordinance, regulating the *use* of property, is sufficient to confer jurisdiction over the approval of plats upon the city planning commission, within the meaning of Section 711.09, Revised Code. In such a case, the exception to the requirements of Section 711.04, *supra*, does not apply, and such requirements must be complied with before the plat is entitled to be recorded.

In view of the fact that you have indicated by your letter that the county commissioners of Marion County have not adopted any rules concerning the platting of land outside of the city of Marion, but within three miles thereof, I invite your attention to Opinion No. 3343, Opinions of the Attorney General for 1953, page 688, the sixth paragraph of the syllabus of which reads as follows:

"Where a board of county commissioners has failed to establish minimum standards for plats and subdivisions by the exercise of its rule-making power under the provisions of Section 711.05, Revised Code, such board would be without authority to withhold its approval of any plats submitted for approval or rejection under the provisions of Sections 711.04 and 711.05, Revised Code."

In specific answer to your inquiry, it is my opinion that:

1. The plat of a proposed subdivision must designate whether the roads shown thereon are intended for public or private use.

2. Where a city planning commission has failed to adopt a plan for the major streets, parks and other public grounds, for the territory outside of the corporate limits of the city; but within three miles thereof, such planning commission has not acquired jurisdiction over the approval of plats of land located within such territory.

3. Where a city planning commission has not acquired jurisdiction over the approval of plats of land located outside the limits of the municipal corporation, it is prerequisite to the recording of plats of such land that they be acknowledged by the owner and approved by the board of county commissioners, in accordance with Section 711.04, Revised Code.

Respectfully,

C. WILLIAM O'NEILL

Attorney General