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1. SUBDIVISION—(A) MAY BE CREATED BY CONVEYANCE OF PART OF SINGLE PARCEL OF LAND WHERE EITHER PART CONVEYED OR PART REMAINING IS LESS THAN FIVE ACRES—(B) BY SURVEY AND PLAT BY OWNER WHO ELECTS TO “LAY OUT A VILLAGE, OR SUBDIVISION OR ADDITION TO A MUNICIPAL CORPORATION”—SECTIONS 711.001, 711.01 RC.
2. OWNER OF LAND—WHEN HE ELECTS TO LAY OUT A SUBDIVISION OR ADDITION TO MUNICIPAL CORPORATION—WHEN PROVISIONS OF SECTIONS 711.01 RC AND 3850 GC ARE MANDATORY—MUNICIPAL CORPORATION.
3. PROVISIONS OF CHAPTER 711. RC DO NOT PER SE REQUIRE SURVEY AND PLATTING OF EVERY SUBDIVISION—RULES AND REGULATIONS—LOCAL JURISDICTION—LOCAL AUTHORITIES—SECTIONS 711.05, 711.09, 711.10 RC.
4. ATTEMPTED CONVEYANCE OF REAL PROPERTY—CONTRARY TO LAW WHERE THE PROCEDURE WOULD CREATE A SUBDIVISION—COUNTY RECORDER—SECTION 711.13 RC.

SYLLABUS:

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.

2. When an owner of land elects to “lay out a * * * subdivision or addition to a municipal corporation” the provisions of Section 711.01, Revised Code, with respect to a survey and plat thereof, being merely restatements without substantive change of the prior analogous provisions of Section 3580, General Code, are mandatory on such owner; but the term “subdivision,” in the context in which it is used in this section, has reference only to such a division of land as is involved when an owner thereof elects to “lay out (an) * * * addition to a municipal corporation” and does not refer to every division of land comprehended by the statutory definition of such term set out in Section 711.001, Revised Code.

3. The provisions of Chapter 711., Revised Code, do not per se require the survey and platting of every “subdivision,” however created, as such term is defined in Section 711.001, Revised Code; but such requirement may be established by rules and regulations promulgated under the provisions of Sections 711.05, 711.09 or 711.10,

Revised Code, in designated local jurisdictions, by the several local authorities enumerated therein.

4. An attempted conveyance of real property is "contrary to the provisions of Chapter 711. of the Revised Code" as this language is used in Section 711.121, Revised Code, where such attempted conveyance would create a subdivision, as defined in Section 711.001, Revised Code, (a) where the grantor has failed to comply with a rule, promulgated by a local authority as authorized in Sections 711.05, 711.09, or 711.10, Revised Code, by the terms of which rule the making and recording of a plat of such subdivision is required; or (b) where, in violation of Section 711.13, Revised Code, such attempted conveyance is made "from or in accordance with a plat of a subdivision as specifically defined in this chapter, before such plat has been recorded in the office of the county recorder."

Columbus, Ohio, November 27, 1953

Hon. Mathias H. Heck, Prosecuting Attorney
Montgomery County, Dayton, Ohio

Dear Sir:

I have for consideration your request for interpretation of the provisions of Chapter 711., Revised Code, in which the following question is presented:

To what extent do the provisions of Chapter 711., Revised Code, impose on the owners of real estate the mandatory duty to cause surveys to be made of subdivisions of such real estate, to cause plats of such surveys to be made, to secure the approval of such plats by the approving authorities established by law, and thereafter to cause such plats to be recorded by the county recorder?

Chapter 711., Revised Code, consists of Sections 711.001 to 711.39, Revised Code, and is a part of Title 7 on the subject of "Municipal Corporations." Prior to the recodification of 1953 the statutes analogous to these were Sections 3580 to 3614, General Code, and these two were assembled in a chapter placed in the title on the subject of "Municipal Corporations."

The sections with which we are here concerned were former Sections 3580 to 3591, General Code, currently recodified as Sections 711.01 to 711.14, Revised Code, certain of which were amended in many important respects by the enactment of House Bill 629, 100th General Assembly, effective October 16, 1953. This enactment also added certain new sections to Chapter 711.

An indication of the general subject of this chapter may be seen in the language of Section 3580, General Code, which section was recodified as Section 711.01, Revised Code, the language of this section remaining unchanged in the enactment of House Bill 629, *supra*. This section prior to the recodification read as follows:

“When a person wishes to lay out a village, or subdivision or addition to a municipal corporation, he should cause it to be surveyed, and a plat or map of it made by a competent surveyor. The plat or map shall particularly describe and set forth the streets, alleys, commons, or public grounds, and all in-lots, out-lots and fractional lots within or adjacent to such village. The description shall include the courses, boundaries and extent.”

(Emphasis added.)

In certain following sections were found requirements as to the contents of plats so made and for the acknowledgment thereof by the owner and the recording of the plats in the office of the county recorder. All of these requirements quite plainly referred, of course, to the plats of such subdivisions as the owners concerned might choose to “lay out” under the provisions of Section 3580, *supra*. With this notion in mind we may observe the provisions of former Section 3591, General Code, as follows:

“If a person disposes of, offers for sale, or leases for a time exceeding five years, any in-lot, or out-lot, or any part of either, in a village, whether incorporated or not, or in an addition to a municipal corporation, before the requirements of this title are complied with, he shall forfeit and pay twenty-five dollars for each lot or part of lot so sold, offered for sale, or leased, to be recovered, with costs, in a civil action, in the name of the county treasurer for the use of the county.”

It would appear that the reference in Section 3591, *supra*, to “the requirements” which must be complied with prior to sale of a lot in “an addition to a municipal corporation” refers to the making, acknowledgment, and recording of a plat of a subdivision, which under the provisions of Section 3580, *supra*, an owner had elected “to lay out.”

It may be noted that in the enactment of House Bill 629, *supra*, the Legislature did not undertake to change the language of Section 3580, General Code, beyond that which was effected by the recodification of this section as Section 711.01, Revised Code. The extent of the changes made

in the code revision will be noted in the following language in Section 711.01:

“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.” (Emphasis added.)

A comparison of the emphasized language in the section as recodified with that found in the prior analogous section in the General Code is certainly suggestive of a substantive change, for the mandatory duty to survey and to plat any subdivision which an owner may “lay out” does not readily appear from the new language. It must be remembered, however, that effect must be given to the legislative intent, as expressed in Section 1.24, Revised Code, Section 2 of the Recodification Act, House Bill No. 1, 100th General Assembly, that the new language is to be regarded as a restatement of existing statutory provisions and not as new enactments and to the express statement in such section that “it is the intent of the General Assembly not to change the law as heretofore expressed by * * * the General Code.”

In view of this provision I conclude that there is still a mandatory requirement in Section 711.01, Revised Code, to make a survey and a plat thereof in every instance in which a land owner elects to “lay out” a “subdivision.” The question of whether a subdivision may be created by some method other than by laying it out by a survey and plat will be given consideration hereinafter.

Section 3591, General Code, to which reference is made above, was recodified as Section 711.15, Revised Code, and as so recodified it referred to the sale of lots “in a village or in an addition to a municipal corporation.” This section was amended, however, in House Bill 629 to read as follows:

“Any person who disposes of, offers for sale, or leases for a time exceeding five years, any lot, or any part of a lot, in a subdivision before sections 711.001 to 711.14, inclusive of the Revised Code, are complied with, shall forfeit and pay the sum of not less than one hundred nor more than five hundred dollars for each lot or part of a lot so sold, offered for sale, or leased, to be recovered,

with costs, in a civil action, in the name of the county treasurer for the use of the county.”

The effect of this change whereby reference is now made to the sale of any lot “in a subdivision” can be appreciated only by reference to one of the new sections enacted in House Bill 629, Section 711.001, Revised Code, which contains statutory definitions of “plat” and “subdivision.” This section reads as follows:

“As used in sections 711.001 to 711.38, inclusive, of the Revised Code:

“(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.”

It is thus seen that although the Legislature has left unchanged the language of Section 711.01, Revised Code, with reference to the laying out of a village, or subdivision or addition to a municipal corporation, by causing the surveying of the territory thus laid out, and the making of a plat based on such survey, there is suggested the question of whether it has changed the meaning of such language indirectly by supplying a new and much more comprehensive definition of the word “subdivision” as used throughout Chapter 711., Revised Code. The extent to which this term was expanded by this definition may be seen by a brief reference to the historical concept of the two words concerned.

The original surveys in that portion of the Northwest Territory

which later was included within the limits of the State of Ohio were made under authority of the various acts of Congress, some of which were enacted prior to the adoption of the United States Constitution. An instance of this legislation is seen in the Act of Congress of May 20, 1785, 1 Laws of the United States, 563, an Act entitled "An ordinance for ascertaining the mode of disposing of lands in the Western Territory." One of the provisions of this act was as follows:

"The surveyors, as soon as they are respectively qualified, shall proceed to divide the said territory into townships of six miles square * * *."

From this we might assume that the township is the original *division* in the survey and that any further division of townships would be regarded as a *subdivision*, and this, of course, is indicated by the following provision in the same act:

"The plats of the townships, respectively, shall be marked, by subdivisions, into lots of one mile square, or 640 acres * * *."

This concept of a plat as being a map of a subdivision, and the concept of a subdivision as constituting a step in the process of surveying land, is generally recognized in standard works on land surveys. See Peters' Ohio Lands and Their Subdivision, and Clark on Surveying and Boundaries.

With this notion in mind of the historical concept of the terms with which we are here primarily concerned, we may return to the question of the extent to which their re-definition by statute has affected the provisions of Chapter 711., Revised Code.

I have already pointed out that in Section 711.15, Revised Code, a penalty is imposed upon any person who offers for sale any lot in a subdivision "before Sections 711.001 to 711.14, inclusive, of the Revised Code, are complied with." We thus come to the question of what requirements are to be found in these sections which must be complied with, for this language clearly suggests that they contain either a prohibition or a mandate, or that they authorize the promulgation of a prohibition or mandate.

Section 711.001, Revised Code, has already been quoted above. It simply provides definitions for the words "plat" and "subdivision" and provides that they shall have the meaning therein designated "as used

in Sections 711.001 to 711.38, inclusive, of the Revised Code." As noted above, Section 711.01, Revised Code, was not directly changed in the enactment of House Bill 629; and this section, as already indicated herein, imposes on owners of land who elect to "lay out * * * a subdivision or addition to a municipal corporation" the duty to make up a survey and plat thereof.

It is readily apparent that if the statutory definition of "subdivision" is applied to this language then the scope of this section has been vastly broadened. I am unable to perceive, however, how such definition can be applied in this instance. In the first place, it must be remembered that the statutory definition of "subdivision" is such as to comprehend a division, or act of dividing, by which one parcel of land is divided into two or more parcels any one of which is less than five acres. Such a division could, therefore, very readily be accomplished by a simple conveyance of a part of a single parcel. The reference in this statute, however, is to a person who has chosen "to lay out * * * a subdivision or addition to a municipal corporation." It is extremely difficult, if not impossible, to suppose that one could "lay out" a subdivision such as this by a simple conveyance, for this expression quite clearly has reference to the process of laying out boundaries in the course of a survey and plat thereof. Moreover, the use of the comma following the word "village," and the use of the word "or" twice in the phrase immediately following such comma, is very clearly indicative of the idea that this language was intended to refer to two, rather than three, distinct situations. These situations are (1) the laying out of a village, and (2) the laying out of a subdivision or addition to a municipal corporation, the terms "subdivision" and "addition" being substantially synonymous as here employed. Both of these situations, it may be noted also, are most commonly encountered in (1) proceedings to incorporate a village and (2) in proceedings to annex territory to a municipal corporation; and the statutes in each instance, Chapters 707. and 709., Revised Code, contemplate the survey and platting of the territory involved. These provisions, incidentally, are wholly in harmony with the view that the provisions in Section 711.01, Revised Code, with respect to a survey and plat thereof, are mandatory when a subdivision of this particular category is involved.

Finally it must be pointed out that in Section 711.101, Revised Code, reference is made to "plats and plans required by sections 711.05, 711.09 and 711.10 of the Revised Code." The reference to these sections with

no similar reference to any such requirements of Section 711.01, Revised Code, would indicate the legislative understanding that such section does not impose the duty to survey and to make up a plat thereof in those instances in which a subdivision is created merely by a conveyance, as distinguished from the method described in this section.

For these reasons I am impelled to the conclusion that the context in which the word "subdivision" is found in Section 711.01, Revised Code, does not permit the statutory definition noted above to be ascribed to it, and so I conclude that in this instance the word was used in the historical sense which I have already pointed out.

Section 711.02, Revised Code, prescribes the contents of the plat "provided for in Section 711.01 of the Revised Code," and this, of course, again refers to the plat which must be made up in cases where owners have elected to lay out a subdivision in the historical sense. This provision cannot be considered, therefore, to require a survey and plat in the case of subdivisions otherwise created.

In Section 711.03, Revised Code, we find the provision for the setting of a corner stone in a surveyed subdivision and in Section 711.04, Revised Code, there is provision for the acknowledgment and recording of a plat after it has been certified by the surveyor. Both of these provisions quite clearly refer back to the plat of a subdivision which any person may elect to "lay out" under authority of Section 711.01, *supra*.

Another provision found in Section 711.04, Revised Code, is for the recording of such a plat, which recording is made mandatory; and it is provided also therein that no such plat may be recorded without the approval, in the case of lands lying outside a municipal corporation, of the county commissioners of the county wherein such lands are situated.

In Section 711.05, Revised Code, a procedure is outlined for the submission of a plat for approval in accordance with Section 711.04, Revised Code, and this also appears clearly to relate back to the provisions of Section 711.01, Revised Code.

A much more important provision in this section is as follows:

"* * * the board (of county commissioners) 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. * * *

The language in this section relative to the adoption of rules "governing plats and subdivisions" for the purposes stated in the statute appears to me to be a broad grant of power and I perceive no reason why it should not be deemed to include the power to promulgate a rule requiring a survey and a plat thereof with respect to any subdivision of land by the owners thereof, however effected, for it must be remembered that even though this language is not new it has nevertheless been given a new meaning by reason of the newly added definition of "subdivision" in Section 711.001, Revised Code.

In this connection it is difficult to see how any such rule could effectively operate to attain the statutory purposes noted above unless provision were made for making known in some detail the precise extent and nature of the subdivision involved, and this could scarcely be done, and certainly could not more effectively be done, otherwise than by a map or plat of such subdivision.

It may perhaps be conceded that when the provisions of this section, and of Sections 711.09 and 711.10, Revised Code, relative to rules and regulations, are considered alone, their interpretation so as to authorize the requirement of platting may be subject to some doubt, but any such doubt must be dispelled, however, by the language of Section 711.101, Revised Code, referring to "plats and plans *required*" by these sections, especially when such language is considered in relation to the circumstance that such sections contain no language, as we shall presently note, which per se establishes a requirement for such plats and plans. Accordingly, I conclude that where such a rule is thus adopted by the board of county commissioners, a mandatory duty is placed on the owners concerned to comply with the several provisions in Chapter 711., Revised Code, relative to the approval and recording of plats.

In Section 711.06, Revised Code, we find a provision which might be thought to be one of a mandatory nature. This section is as follows:

"A proprietor of lots or grounds in a municipal corporation, who subdivides or lays them out for sale, shall make an accurate plat of such subdivision, describing with certainty all grounds laid out or granted for streets, alleys, ways, commons, or other

public uses. Lots sold or intended for sale shall be numbered by progressive numbers or described by the squares in which situated, and the precise length and width shall be given of each lot sold or intended for sale. Such plat shall be subscribed by the proprietor, or his agent duly authorized by writing, and acknowledged before an officer authorized to take the acknowledgement of deeds, who shall certify the acknowledgement of the instrument, and such plat shall be recorded in the office of the county recorder."

It is to be noted that this section does not actually use the word "subdivision" but rather refers to a "proprietor of lots or grounds * * * who subdivides or lays them out for sale."

In 37 Ohio Jurisprudence, 726, Section 405, we find the following statements:

"Those statutes are generally subject to a strict construction which impose restrictions upon the use of private property, or which regulate or restrain the disposition thereof, or which, in general, interfere with private property rights. On the other hand, exemptions from such restrictive provisions are liberally construed. 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."

In the instant case we are clearly concerned with a statute which purports to regulate or restrain the disposition of private property and this is, therefore, a proper instance for resolution of any doubts in favor of the property owner.

I consider it to be a matter of some doubt whether the Legislature intended by the statutory definition of the word "subdivision" to ascribe the same or a similar meaning to the word "subdivide," and since the provisions of Section 711.06, Revised Code, were not directly changed by the enactment of House Bill 629, supra, it might be supposed that the strict construction which we are required to accord the language in this section necessitates that it be given the meaning originally ascribed to it by the Legislature which enacted it, i.e., a meaning in harmony with the historical concept of the act of subdividing lands which we have already pointed out.

In this same connection it may be observed that the word "subdivide," as used in this section, plainly refers to such a subdivision as is involved in the making of a plat on which is described (1) all grounds

laid out or granted for streets, alleys, ways, commons, or other public uses and (2) the numbering of lots sold or intended for sale. This would indicate that reference is made to a subdivision of the sort provided for in Section 711.01, supra, rather than to every division of a parcel into two or more parcels falling within the definition found in Section 711.001, supra.

Finally, it is a matter of some significance that we are here concerned with "a proprietor of lots * * * who subdivides * * * them * * * for sale." This clearly indicates a future sale and thus is indicative of the idea that the "subdivision" itself is to be completed before the lots are sold, and precludes the idea that the subdivision is one which could be effected by a conveyance alone. I conclude, therefore, that the statute itself does not impose a mandatory duty to survey and to make up a plat of a subdivision within a municipal corporation merely because a subdivision by conveyance has been effected within the meaning of the statutory definition of this term as set out in Section 711.001, supra, as opposed to a subdivision in the historical sense of the term.

In Section 711.07, Revised Code, we find merely a provision that upon the recording of the plat the fee of such land designated thereon for streets, alleys, ways, commons, etc., shall vest in the municipal corporation concerned; and there is of course nothing in this to suggest in any way a mandatory duty with reference to platting which would assist us in the present inquiry.

In Section 711.08, Revised Code, provision is found for the approval of a plat by the city engineer prior to the recording with the county recorder, and this, of course, again refers only to the plats of such subdivisions or additions as the owners concerned may elect to lay out under the provisions of Section 711.01, Revised Code, or to such as may be made mandatory under a rule adopted by a local authority.

Section 711.09, Revised Code, provides for the approval of plats by a city or village planning commission prior to recording; and authorization is given in this section to such planning commission, to a platting commissioner, or to the municipal legislative authority, as the case may be, to adopt "rules and regulations governing plats and subdivisions of land" falling within the jurisdiction of the municipality concerned. Here again we may perceive the possibility of a mandatory duty to plat a subdivision being imposed on owners of real estate in those cases where a rule has been promulgated by one of the agencies just mentioned requir-

ing a survey and plat thereof with respect to any subdivision of land however effected, for such rule-making authority must be regarded as being fully as broad in scope as that which we have already noted in Section 711.05, *supra*. Aside from this possibility I find nothing in the language of this section which would per se make the procedure mandatory.

In Section 711.091, Revised Code, we find provision authorizing a city, village or county engineer to inspect the construction of streets laid out by the owner of a subdivision to ascertain whether they have been constructed in accordance with specifications set forth on the approved plat; and it is provided that such approval when made shall constitute an acceptance of the street for public use by the city, village or county, as the case may be.

Section 711.10 relates to the approval of plats of subdivisions in unincorporated territory, such approval being required to be made by the county or regional planning commission, and these agencies also are given authority to adopt rules and regulations "governing plats and subdivisions of land" falling within their jurisdiction. While there is clearly a necessity under the provisions of this section of obtaining approval of these planning agencies in cases where the owner concerned has chosen to subdivide his land for sale under the provisions of Section 711.01, Revised Code, I perceive nothing in any of these provisions which per se would impose a duty upon such owner to make up a plat in a situation in which he has not elected to lay out a subdivision or addition as provided in such section. Here, again, it is necessary to note an exception in those cases where a county or regional planning commission has promulgated a rule requiring a survey and plat thereof with respect to any subdivision of land, however effected, for their statutory authority in this regard cannot be deemed less broad in scope than that already pointed out in Sections 711.05 and 711.09, Revised Code.

Section 711.101 authorizes the legislative authority of a municipal corporation or the board of county commissioners to adopt general rules and regulations as to land falling within their jurisdiction, setting standards for the construction of improvements shown on plats and plans "required by Sections 711.05, 711.09 and 711.10 of the Revised Code." This language clearly indicates that the legislative draftsmen were under the impression that these enumerated sections either impose or provide for the

imposition of a mandatory duty to prepare plats and plans. Moreover, it may be noted that this section additionally provides that such rules and regulations "may make such installation a condition precedent to the sale or lease of lots in a subdivision;" and here again is a very clear indication of an understanding on the part of the legislative draftsmen that the effect of this section, considered in relation to Sections 711.05, 711.09 and 711.10, *supra*, would be to forbid, in some instances at least, the sale of "lots in a subdivision," either within or without a municipal corporation, until plats and plans with respect thereto have been prepared, approved and recorded. The three sections here concerned have already been commented upon above and although in none of them, as we have seen, can there be found any language which can be construed *per se* to impose a mandatory duty upon owners who have effected a subdivision as defined in Section 711.001, to make up plats and plans in every case in which a subdivision is created merely by conveyance, the rule-making authority therein conferred does authorize the establishment of such duty by action of the local authorities. For this reason we may conclude that this language in Section 711.101, *supra*, has reference to those cases in which the rule-making agency concerned has promulgated a rule requiring such procedure.

It could, perhaps, be argued further that the language noted above in Section 711.101 is indicative of a legislative understanding, or even of a legislative intent, to make it mandatory on owners who have effected any subdivision of their land to have the same surveyed and plats thereof made regardless of the action or inaction of the local authorities. It must be remembered, however, that we are here concerned with legislation which would restrict the right of owners in the sale of property and that such legislation must be strictly construed. Accordingly, regardless of what might seem to have been the understanding of the legislative draftsmen as to the effect of other provisions of the statute, if there has been omitted from the statute any language which clearly imposes such duty, it would appear to be impossible to supply the deficiency by interpretation. This would appear to be a proper instance for the application of the rule stated in *Slingluff et al. v. Weaver, et al.*, 66 Ohio St., 621, to the effect that the "question is not what did the General Assembly intend to enact, but what is the meaning of that which it did enact." The instant case is, of course, quite different from that which was before the court in the *Slingluff* case, for there the legislative language was clear and without

ambiguity, and the court held that the plain meaning of the legislative language would not be ignored in an inquiry as to legislative intent. In the instant case we do have ambiguity, but such ambiguity arises from the omission by the Legislature of the keystone, so to speak, of the structure it might be thought to have intended to erect, i.e., language which by any fair interpretation could be supposed to impose the mandatory duty of platting in every instance where a subdivision has been effected. Having failed to enact such a provision, I am unable to see that the legislative understanding of what had been enacted, or the legislative intent to enact it, if such be the case, would be sufficient to remedy the matter.

Finally, as already pointed out above, this reference to "plats and plans required by Sections 711.05, 711.09 and 711.10" is readily explained by the provisions in these sections authorizing, but not requiring, the promulgation of rules requiring surveys and plats thereof in the case of all subdivisions of land. I conclude, therefore, that the provisions of Section 711.101, supra, indicative though they may be thought to be of a legislative understanding that Sections 711.05, 711.09 and 711.10, Revised Code, required the making up of plats and plans, cannot be relied upon to construe the provisions of these sections so as to make it mandatory to survey and plat a subdivision effected merely by conveyance if the owner does not choose to do so in a jurisdiction where no rule has been promulgated under the provisions of Section 711.05, 711.09 or 711.10, Revised Code, making such survey and plat a mandatory duty.

Section 711.102, Revised Code, provides a penalty for the violation of the rules and regulations adopted pursuant to the next preceding section.

Section 711.103 makes provision for the recording of a plat which had been tentatively approved prior to June 1, 1953.

In Section 711.104 we find a requirement that lots shown on a plat which has been recorded as authorized in the next preceding section, shall be entered on the tax list for taxation according to their lot numbers and subdivisions, and the further provision that conveyances by lot number and subdivision shall be sufficient to pass title.

In Section 711.11 is a provision relative to the conveyance of a fee simple title of all parcels of land shown on plats "mentioned in Section

711.01 of the Revised Code” as being intended for public use. In none of the four sections just mentioned is there any language suggestive of mandatory duty to make a plat in a situation other than that described in Section 711.01, Revised Code, if the owner of the land concerned does not choose so to do.

Section 711.12 and Section 711.121, Revised Code, read as follows:

Section 711.12:

“A county recorder who records a plat contrary to sections 711.01 to 711.38, inclusive, of the Revised Code, shall forfeit and pay not less than one hundred nor more than five hundred dollars to be recovered with costs in a civil action by the prosecuting attorney in the name and for the use of the county.”

Section 711.121:

“The county auditor and the county recorder shall not transfer property or record deeds or leases which attempt to convey property *contrary to the provisions of Chapter 711. of the Revised Code*. In case of doubt, the county auditor or county recorder may require the person presenting such deed or lease to give evidence of the legality of a conveyance by metes and bounds by an affidavit as to the facts which exempt such conveyance from the provisions of Chapter 711. of the Revised Code.”

(Emphasis added.)

The use of the expression “which attempts to convey property contrary to the provisions of Chapter 711. of the Revised Code” is another instance of language which, it might be argued, is indicative of a legislative understanding that by the enactment of House Bill 629 statutory restrictions have been imposed on the conveyance of land whereby any subdivision, as defined in the statute, is effected. Certain such restrictions have already been pointed out in discussing the reference in Section 711.101, *supra*, to the plats and plans required by Sections 711.05, 711.09 and 711.10.

Another such restriction was noted also in Section 711.101, *supra*, where the installation of certain improvements might, under rules adopted by a planning commission, the legislative authority of the municipal corporation, or a board of county commissioners, be made a condition precedent to the sale or lease of lots in a subdivision. This restriction, however, as we have already pointed out, appears to apply only in those instances where a subdivision has been platted either in compliance with the provisions of Section 711.01, Revised Code, or in compliance with a rule

requiring surveys and plats. Such being the case, it follows that nothing in Section 711.12 or Section 711.121 imposes any mandatory duty upon the owner of land who does not choose to plat such subdivisions of land as he may create by a mere conveyance in a jurisdiction in which such procedure is not required by rule.

Section 711.13, Revised Code, contains the following provision :

“Whoever, being the owner or agent of the owner of any land within or without a municipal corporation, transfers any lot, parcel, or tract of such land *from or in accordance with a plat of a subdivision as specifically defined in this chapter*, before such plat has been recorded in the office of the county recorder, shall forfeit and pay the sum of not less than one hundred nor more than five hundred dollars for each lot, parcel, or tract of land so sold. The description of such lot, parcel, or tract by metes and bounds in the deed or transfer shall not serve to exempt the seller from the forfeiture provided in this section.”

(Emphasis added.)

Here, of course, is a definite restriction on the transfer of land in a subdivision prior to the recording of a plat thereof.

It is clear in this instance that the Legislature has used the word “subdivision” in the broadest possible sense permitted in the statutory definition. The question thus arises, what constitutes a conveyance “from or in accordance with a plat of a subdivision.” Quite obviously the transfer of a lot or parcel of land by lot number and subdivision would be a conveyance “from or in accordance with a plat of a subdivision.” However, we find the further provision in this section to the effect that a transfer by metes and bounds shall not serve to exempt the seller from the forfeiture therein provided. This could perhaps indicate an intent that a subdivision, i.e., a division of one parcel of land into two or more parcels, effected by a conveyance by metes and bounds, should not be effected unless and until a plat of such subdivision has been recorded, were it not for the fact that the penalty is imposed when a transfer is made “from or in accordance with a *plat*.” The language thus quoted quite plainly indicates that a plat must have been in existence prior to the conveyance, and it would appear to follow that where no such plat is in existence at the time of the conveyance, i.e., where a subdivision itself comes into existence by virtue of the conveyance, no penalty was intended. To say the least, this language is ambiguous, and since it is necessary to accord it a strict construction in favor of the owner, I readily conclude that unless there be an

unrecorded plat in existence at the time the conveyance is made, no penalty will be incurred under the provisions of this section.

Section 711.131, Revised Code, reads 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 sections 711.05, 711.09 or 711.10 of the Revised Code for approval without plat. If such authority acting through a properly designated representative thereof is satisfied that such proposed division is not contrary to applicable platting, subdividing, or zoning regulations it shall within seven working days after submission approve such proposed division and, on presentation of a conveyance of said parcel, shall stamp the same ‘approved by (planning authority); no plat required’ and have it signed by its clerk, secretary, or other official as may be designated by it. Such planning authority may require the submission of a sketch and such other information as is pertinent to its determination hereunder.”

The exception set out in the first sentence of this section is such as to indicate a legislative understanding that in the absence of such a provision certain subdivisions effected by a conveyance or series of conveyances in the situation therein described would require the owner concerned to plat such subdivision, secure an approval of the plat, and to record it. Here again, it might be argued, is an indication of the legislative notion that platting was mandatory in every instance in which a subdivision as defined by the statute has been effected. As already pointed out, however, such an understanding on the part of the legislative draftsmen cannot operate to supply language which by a fair interpretation can be supposed to impose such duty. Moreover, this reference to Sections 711.05, 711.09, and 711.10, may well have been made here, as we have concluded it was in Section 711.101, by reason of the rule-making authority conferred on the several local agencies mentioned in these sections.

In Section 711.132 provision is made for the adoption of rules and regulations by a planning commission following public hearing and the approval thereof by the legislative authority of a municipal corporation or the board of county commissioners, as the case may be.

In Section 711.14 provision is found for a penalty for the failure to

plant cornerstones where a village or addition to a municipal corporation is laid out, and a penalty for surveying and platting, otherwise than as prescribed in Sections 711.01 to 711.13, inclusive. Neither of these sections, of course, adds anything to the resolution of the basic question here involved.

It is thus to be seen from a thorough examination of the provisions of Sections 711.001 and 711.14, inclusive, that although Section 711.01, Revised Code, imposes a duty to make a survey and plat in every instance in which an owner of land elects to "lay out" a subdivision within the historical meaning of such term, there is nowhere therein to be found any mandatory duty to survey and plat every subdivision, as this term is defined by statute, although provision is made for the promulgation of rules imposing such duty. Accordingly, the penalty provision in Section 711.15, Revised Code, to which we have already referred, would appear to be applicable only in those instances where the owners concerned have elected under the provisions of Section 711.01 to subdivide in a particular way, i.e., by surveying a tract of land and by making up a plat of such tract showing the several divisions thereof into smaller units, or in those instances where the owner concerned has disregarded a valid rule requiring a survey and plat where a subdivision is created by a mere conveyance; and I conclude that such is the legal effect of the enactment of House Bill 629.

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

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.

2. When an owner of land elects to "lay out a * * * subdivision or addition to a municipal corporation" the provisions of Section 711.01, Revised Code, with respect to a survey and plat thereof, being merely restatements without substantive change of the prior analogous provisions of Section 3580, General Code, are mandatory on such owner; but the term "subdivision," in the context in which it is used in this section, has reference only to such division of land as is involved when an owner thereof

elects to "lay out (an) * * * addition to a municipal corporation" and does not refer to every division of land comprehended by the statutory definition of such term set out in Section 711.001, Revised Code.

3. The provisions of Chapter 711., Revised Code, do not per se require the survey and platting of every "subdivision," however created, as such term is defined in Section 711.001, Revised Code; but such requirement may be established by rules and regulations promulgated under the provisions of Sections 711.05, 711.09 or 711.10, Revised Code, in designated local jurisdictions, by the several local authorities enumerated therein.

4. An attempted conveyance of real property is "contrary to the provisions of Chapter 711. of the Revised Code" as this language is used in Section 711.121, Revised Code, where such attempted conveyance would create a subdivision, as defined in Section 711.001, Revised Code, (a) where the grantor has failed to comply with a rule, promulgated by a local authority as authorized in Sections 711.05, 711.09, or 711.10, Revised Code, by the terms of which rule the making and recording of a plat of such subdivision is required, or (b) where, in violation of Section 711.13, Revised Code, such attempted conveyance is made "from or in accordance with a plat of a subdivision as specifically defined in this chapter, before such plat has been recorded in the office of the county recorder."

Respectfully,

C. WILLIAM O'NEILL
Attorney General