

Note from the Attorney General's Office:

1987 Op. Att'y Gen. No. 87-110 was overruled in part by
1994 Op. Att'y Gen. No. 94-066.

OPINION NO. 87-110**Syllabus:**

1. Pursuant to R.C. 319.20, a county auditor may, pursuant to rule, refuse to transfer property on the tax list until the deed purporting to transfer the property contains an accurate description of the property to be transferred. (1986 Op. Att'y Gen. No. 86-028 (syllabus, paragraph one) and 1980 Op. Att'y Gen. No. 80-029, approved and followed.)
2. Pursuant to R.C. 711.05, a board of county commissioners may, pursuant to rule, refuse to approve a plat for recording until the plat to be recorded contains accurate metes and bounds descriptions of the real property in the plat.
3. R.C. 5713.09 and R.C. 325.14 require the county engineer to make, correct, and maintain the county tax map.
4. R.C. 5713.13 and R.C. 5713.16 authorize the county auditor to modify recorded documents only in the limited circumstances described in R.C. 5713.13-.16.
5. R.C. 2719.02 permits persons or bodies corporate who have an interest in the correction of an error in a recorded document to correct the error by filing a petition in the county court of common pleas asking the court to issue an order for its correction.
6. A county that has not adopted a charter pursuant to R.C. 301.22 is not a body corporate, and may not file a petition to alter a recorded document under R.C. 2719.02.

To: R. Alan Corbin, Brown County Prosecuting Attorney, Georgetown, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, December 29, 1987

I have before me your request for my opinion concerning the correction of plats and deeds that have been recorded with inaccurate metes and bounds descriptions. These errors were apparently brought to your attention by the county "tax map department." You wish to know how the errors may be corrected. Pursuant to R.C. 5713.09, county engineers create a county tax map that the county auditor uses to compile the tax list for the county:

The board of county commissioners may designate the county engineer to provide for making, correcting, and keeping up to date a complete set of tax maps of the county, and shall employ the necessary number of assistants. Such maps shall show all original lots and parcels of land, and all divisions, subdivisions, and allotments thereof, with the name of the owner of each original lot or parcel and of each division, subdivision, or lot, all new divisions, subdivisions, or allotments made in the county, all transfers of property, showing the lot or parcel of land transferred, the name of the grantee, and the date of the transfer so that such maps shall furnish the county auditor, for entering on the tax duplicate, a correct and proper description of each lot or parcel of land offered for transfer. Such maps shall be for the use of the county board of revision and the auditor, and shall be kept in the office of the auditor.¹ (Emphasis and footnote added.)

According to a member of your staff, the tax map department created under this provision examined instruments incident to a conveyance and found errors in the metes and bounds descriptions. Based on a conversation between a member of my staff and a member of your staff, I have rephrased your questions as follows:

1. May a county auditor refuse to approve the transfer of a lot upon the tax list if the legal description of the lot contained on the deed is inaccurate?

¹ Although the language of R.C. 5713.09 indicates that the county commissioners may decide whether or not to designate the county engineer to create and maintain the tax maps, R.C. 325.14 provides that "[t]he engineer shall be the county tax map draftsman, but shall receive no additional compensation for performing the duties of such position." (Emphasis added.) One of my predecessors has interpreted the enactment of R.C. 325.14 (formerly G.C. 7181) as repealing by implication the portion of R.C. 5713.09 (formerly G.C. 5551) that authorized the county commissioners to appoint the county engineer (formerly the county surveyor) as the tax map draftsman. See 1945 Op. Att'y Gen. No. 181, p. 152, at 154; 1923 Op. Att'y Gen. No. 229; vol. I, p. 161 (syllabus, paragraph two); 1983 Op. Att'y Gen. No. 83-027, p. 2-101 n. 5. The use of the word "shall" in R.C. 325.14 has been interpreted to mean that the county engineer must assume the tax map duties. See generally 1983 Op. Att'y Gen. No. 83-027, p. 2-101 n. 5, Dorrian v. Scioto Conservancy District, 27 Ohio St. 2d 102, 271 N.E.2d 834 (1971) (syllabus, paragraph one).

2. May a board of county commissioners refuse to approve for recording a plat of land that contains inaccurate metes and bounds descriptions of the real property in the plat?
3. Who is responsible for correcting a recorded plat or deed containing inaccurate metes and bounds descriptions of the real property?

Turning to your first question, I note that a county auditor is a creature of statute, see R.C. 319.01, and, as such, has only those powers "as are expressly delegated to [him] by statute and such as are necessarily implied from those so delegated." Schultz v. Erie County Metropolitan Park District Board, 26 Ohio Misc. 68, 69, 269 N.E.2d 72, 73 (C.P. Erie County 1971)(citations omitted); see also 1986 Op. Att'y Gen. No. 86-028. R.C. 319.28 provides that the county auditor is responsible for compiling a general tax list of real property in the county. The list must contain a description of each tract, lot, or parcel of real estate in appropriate columns opposite the names of the persons, companies, firms, associations, and corporations in whose names real property in the county has been listed. The tax list must be prepared in duplicate; the auditor is to keep one copy and deliver the second copy to the county treasurer. Id.

R.C. 319.20 explains the circumstances under which a county auditor shall transfer land upon the county tax list, and provides in pertinent part:

After complying with [R.C.] 319.202...and on application and presentation of title, with the affidavits required by law, or the proper order of a court, bearing the last known address of the grantee, or of any one of the grantees named in the title, and a reference to the volume and page of the recording of the next preceding recorded instrument by or through which the grantor claims title, the county auditor shall transfer any land or town lot or part thereof, minerals therein, or mineral rights thereto, charged with taxes on the tax list, from the name in which it stands into the name of the owner, when rendered necessary by a conveyance, partition, devise, descent, or otherwise.

See R.C. 319.202; 1983 Op. Att'y Gen. No. 83-027; 1969 Op. Att'y Gen. No. 69-139 at 2-298. (R.C. 319.202 "deals only with conditions precedent to filing, such as declarations of value, fees and exceptions therefrom").

Despite this mandate, the county auditor may refuse to transfer property on the tax list when the deed that purports to transfer the property contains an inaccurate description of that property. I addressed an issue similar to the one you raise in your letter in 1986 Op. Att'y Gen. No. 86-028. I opined in paragraph one of the syllabus of that opinion that a county auditor may "require that all deeds and other instruments of conveyance be submitted to the county engineer for a determination as to whether the descriptions contained in said instruments are legally sufficient prior to submission to the county auditor for transfer of the real property upon the tax list pursuant to R.C. 319.20." I based this conclusion on a 1961 case in which the Monroe County Court of Common Pleas addressed that same issue. State ex rel. Ballard v. McKelvey,

89 Ohio L. Abs. 407, 184 N.E.2d 124 (C.P. Monroe County), aff'd, 89 Ohio L. Abs. 415, 186 N.E.2d 144 (Ct. App. Monroe County 1961). In Ballard, the plaintiff sued for a writ of mandamus against the county auditor after the auditor refused to transfer a deed upon the tax list unless the deed was submitted to the county engineer for approval or disapproval of the descriptions of the land to be transferred by the deed.

The court denied the writ, concluding that the county auditor had the authority to promulgate a rule requiring the county engineer to approve the legal descriptions on deeds before the auditor transferred the deeds on the county tax list. 89 Ohio L. Abs. at 411, 184 N.E.2d at 126. The court reasoned that the rule was necessary to enable the required tax maps to be prepared accurately so that the county auditor would have correct information from which he could enter onto the tax duplicate a "correct and proper description of each lot or parcel offered for transfer." 89 Ohio L. Abs. at 411-12, 189 N.E.2d 126-27.

In a similar case, the Monroe County Court of Common Pleas reaffirmed the county auditor's right to promulgate reasonable rules requiring deed descriptions "to be in such form and detail as to enable the auditor to perform his duties." Briggs v. Jeffers, 7 Ohio Misc. 44, 48, 215 N.E.2d 622, 626 (C.P. Monroe County 1965) (citations omitted). See generally 1980 Op. Att'y Gen. No. 80-029 at 2-119 (noting that "[t]he only exception which the courts have recognized to the mandatory nature of the county auditor's duty to process a deed is that a county auditor may refuse to transfer a conveyance of real estate upon the tax list if the description of the land to be conveyed is legally insufficient") (citation omitted). Accordingly, I conclude that a county auditor may, by rule, require that a deed contain an accurate description of the land to be transferred, and that the auditor may submit any deeds to the county engineer for approval. If the county engineer concludes that a deed does not contain an accurate description of the land to be conveyed, the county auditor is under no obligation to transfer the property upon the tax list until the appropriate parties submit a deed that meets with the county engineer's approval.

In your second question, you ask whether a board of county commissioners may refuse to approve for recording a plat that contains inaccurate metes and bounds descriptions of the real property described in the plat. A member of your staff has indicated that the plat involved in the situation you present in your letter describes a subdivision of land outside a municipal corporation. R.C. 711.04 provides for acknowledgment and recording of plats, but R.C. 711.041 provides that 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." You indicate in your letter that the commissioners approved the plat; you wish to know whether the commissioners had the authority to refuse the request, or would have the authority to turn down a similar request in the future. I presume that the commissioners granted their approval pursuant to R.C. 711.05, which provides:

Upon the submission of a plat for approval, in accordance with [R.C.] 711.041...the board of county commissioners shall certify thereon the date of the submission. Within five days of submission of the plat, the board shall schedule a meeting to consider

the plat and send a written notice by certified mail, return receipt requested, to the clerk of the board of township trustees of the township in which the plat is located. The notice shall inform the trustees of the submission of the plat and of the date, time, and location of any meeting at which the board of county commissioners will consider or act upon the proposed plat. The meeting shall take place within thirty days of submission of the plat, and no meeting shall be held until at least seven days have passed from the date the notice was sent by the board of county commissioners. The approval of the board required by [R.C.] 711.041...or the refusal to approve shall take place within thirty days from the date of submission or such further time as the applying party may agree to in writing; otherwise the plat is deemed approved and may be recorded as if bearing such approval. The board may adopt general rules governing plats and subdivisions of land falling within its jurisdiction, to secure and provide for the coordination 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 areas than forty-eight hundred square feet. Where under the provisions of [R.C.] 711.101...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 may require the submission of appropriate plans and specifications for approval. The ground of refusal to approve any plat, submitted in accordance with [R.C.] 711.041...shall be stated upon the record of the board and, within sixty days thereafter, the person submitting any plat which the board refuses to approve may file a petition in the court of common pleas of the county in which the land described in said plat is situated to review the action of such board. A board of township trustees is not entitled to appeal a decision of the board of county commissioners under this section. (Emphasis added.)

A board of county commissioners is a creature of statute and has only those powers conferred upon it by statute or necessarily implied therefrom. See, e.g., State ex rel. Shriver v. Board of County Commissioners, 148 Ohio St. 277, 74 N.E.2d 248 (1947)(syllabus, paragraph 2). Nothing in R.C. 711.05 gives county commissioners the express authority to determine the accuracy of metes and bounds descriptions of plats before they approve them, or to refuse to approve the plats if they contain inaccurate metes and bounds descriptions. R.C. 711.05 does provide, however, that the board of county commissioners may "adopt general rules governing plats and subdivisions of land falling within its jurisdiction." One of my predecessors has interpreted this language as a broad grant of authority to the board of county commissioners:

The language in [R.C. 711.05] 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.

1953 Op. Att'y Gen. No. 3285, p. 654 at 662.

Another of my predecessors interpreted R.C. 711.05 in 1960 Op. Att'y Gen. No. 1921, p. 733. My predecessor noted that R.C. 711.05 "authorize[s] the board to adopt general rules and regulations governing plats and subdivisions and to require the submission of approp[riate] plans and specifications for approval." *Id.* at at 739. I further note that R.C. 711.02(B), which governs the contents of plats, requires that every plat shall contain "an accurate background drawing of any metes-and-bounds descriptions of the lands of the dedicators from which such plat is drawn." (Emphasis added.) Thus, R.C. 711.02(B) requires plats to be drawn accurately, and R.C. 711.05 permits boards of county commissioners to promulgate rules governing plats and subdivisions. Accordingly, I conclude that boards of county commissioners may promulgate rules permitting them to refuse to approve a plat for recording until the plat to be recorded contains accurate metes and bounds descriptions of the real property in the plat.

In your third question, you ask who is responsible for correcting plats and deeds that have been recorded with inaccurate metes and bounds descriptions. The General Assembly has provided specific authority for state or county officers to correct errors in deeds and other recorded documents in certain circumstances. See, e.g., R.C. 5301.17 (providing that the Governor may correct deeds executed and delivered in the name of the state), R.C. 5309.76 (providing that the county recorder may correct errors in a registered title to land), R.C. 319.35 and R.C. 5713.19 (providing that the county auditor may correct clerical errors found in the tax list). In addition, the county auditor has limited authority to correct certain recorded documents. R.C. 5713.13 provides that the county auditor may require sections of land to be "accurately platted and laid out into subdivisions as the different titles to the land require" and to have those new plats recorded in certain circumstances:

When an original survey, section, tract, or lot has become divided into such small parcels or fractions so that the description of the several parts thereof is indefinite and doubtful, the county auditor when appraising any such survey, section, tract, or lot, or part thereof, shall cause the said section, or such parts thereof as are necessary, to be accurately platted and laid out into such subdivisions as the different titles to the land therein require, and number the said fractions or subdivisions as fractions or subdivisions of said section, tract, or lot, or part thereof, or the part that is subdivided, and deliver the plat so numbered to the county recorder, who shall accurately record it. After such record has been made, the numbers given to said subdivisions or fractions shall be a sufficient description of land so platted, numbered, and recorded for all purposes of taxation and conveyancing. (Emphasis added.)

If a plat is not made and recorded pursuant to R.C. 5713.13, the auditor may require production of title papers and surveys in limited circumstances pursuant to R.C. 5713.14:

When the assessor has neglected to plat and number the divisions, mentioned in [R.C.] 5713.13...or the survey, section, tract, lot, or part thereof, is subdivided after the assessment and appraisal thereof, and the county auditor believes it should be platted and numbered for the purpose of a pertinent description thereof upon his duplicate, the auditor may require the owner or occupier of such section, tract, lot, or part thereof, to produce to him at his office the title papers and surveys of the several subdivisions thereof, as well as of the survey, section, tract, lot, or part thereof, subdivided, on a day certain, not longer than thirty nor less than ten days from the date of such notice.

If the owner refuses to make the survey or produce the papers required by the county auditor pursuant to R.C. 5713.14, R.C. 5713.15 permits the auditor to require the property owner to make the survey himself or to pay for the survey to be made by the county engineer:

If the owner or occupier of a subdivided survey, section, tract, lot, or part thereof fails to appear when required, and to produce the title papers, or produces them in such manner that the county auditor cannot plat and number said subdivisions without a survey, the auditor may require such owner or occupier to cause such subdivisions to be surveyed, platted, and numbered within twenty days, and to deliver said survey and plat to the county recorder for record. If such survey and plat is not made and delivered to the recorder within the time required, or the owner or occupier has not appeared when required, the auditor may cause the subdivision of such survey, section, tract, lot, or part thereof, to be surveyed, platted, and numbered by the county engineer and recorded by the recorder. The expense of the survey and record made by the order of the auditor shall be reported to him by the engineer and recorder, and the auditor shall add the expense to the tax on such subdivisions in proportion to the quantity of land in each. The expenses shall be collected as are other taxes against the land, and when collected paid over to the parties entitled thereto on the warrant of the auditor.

R.C. 5713.16 provides that the county auditor may make plats from title papers produced to him, apparently pursuant to R.C. 5713.14. R.C. 5713.16 also provides that any plats produced by the county auditor or the county engineer, "shall be recorded upon the records of deeds of the county."

Although these statutes give the county auditor broad authority to require the production of titles, surveys, and other documents, this authority is only granted in very limited circumstances. R.C. 5713.13 permits the county auditor to require a plat to be created only if the description of the property is "indefinite and doubtful," and only when he is in the process of appraising the property. (R.C. 5713.01 provides that the county auditor shall appraise each "lot or parcel of real estate...at least once in each six-year period.") The authority to require property owners to produce plats and

surveys that is granted by R.C. 5713.14 may only be exercised when "the assessor has neglected to plat and number the divisions, mentioned in [R.C.] 5713.13...or the survey, section, tract, lot, or part thereof, is subdivided after the assessment and appraisal thereof, and the county auditor believes it should be platted and numbered for the purpose of a pertinent description thereof upon his duplicate." As I understand the facts, neither of these situations is present in the situation presented in your letter. Accordingly, I conclude that the county auditor has no authority to correct the recorded plats or deeds containing inaccurate metes and bounds descriptions to which you refer. Indeed, I can find no statute or regulation in which the General Assembly has provided a method for any county officer to correct inaccurate metes and bounds descriptions in recorded documents in the situation presented in your letter.

The General Assembly has, however, provided a method for other persons or bodies to correct inaccuracies in recorded documents. R.C. 2719.02 permits persons or bodies corporate to file a petition to correct any "error, defect, or omission" in recorded documents:

When an error, omission, or defect as described in [R.C.] 2719.01...occurs in an instrument or proceeding which is required to be made a matter of record, a party, person, body corporate, or persons intending and undertaking to become a body corporate, having or claiming an interest in the correction of such error, omission, or defect, may file a petition in the court of common pleas, setting forth particularly the error, defect, or omission complained of, and asking an order for its correction. (Emphasis added.)

See also R.C. 2719.01 (providing that courts may disregard defects in recorded documents to give full effect to the manifest intentions of the parties). R.C. 2719.05 provides for the recording of the order correcting the error:

Upon being satisfied that the mistake, error, or omission set forth in the application under [R.C.] 2719.02...was made, the court of common pleas shall make an order to correct it, which order shall be filed in the office wherein such record is required to be kept. From and after such filing, such record, and the order correcting it, shall be received as evidence in all cases, in all courts, as if no such error, omission, or defect ever existed.

I note that a county is not a body corporate; thus, a county may not file a petition to change a recorded document pursuant to R.C. 2719.02. See, e.g., Zents v. Board of County Commissioners, 9 Ohio St. 3d 204, 208, 459 N.E.2d 881, 885 (1984) (Locher, J., dissenting) ("In Ohio, a county is not regarded as a body corporate like a municipality, but rather as a political subdivision of the state") (citing Western Pennsylvania National Bank v. Ross, 345 F.2d 525 (6th Cir. 1965)). But see R.C. 301.22 (providing that "[e]very county adopting a charter or an alternative form of government is a body politic and corporate for the purpose of enjoying and exercising the rights and privileges conveyed under it by the constitution and the laws of this state. Such county is capable of suing and being sued, pleading and being impleaded"). I note that R.C. 2719.02 does not require interested parties to file

suit to correct errors in recorded documents; rather, it provides that they "may file a petition in the court of common pleas...asking an order for...correction [of the error]." (Emphasis added.) See also R.C. 5301.21 (providing that private parties may agree to the establishment of a boundary line or corner between their property). Thus, I conclude that in the absence of circumstances that would permit a county auditor or other county officer to order corrections pursuant to R.C. Chapters 319, 5301, 5309, or 5713, errors in recorded documents may only be corrected by means of an action filed by interested parties pursuant to R.C. Chapter 2719, or by agreement pursuant to R.C. 5301.21.

Accordingly, it is my opinion and you are advised that:

1. Pursuant to R.C. 319.20, a county auditor may, pursuant to rule, refuse to transfer property on the tax list until the deed purporting to transfer the property contains an accurate description of the property to be transferred. (1986 Op. Att'y Gen. No. 86-028 (syllabus, paragraph one) and 1980 Op. Att'y Gen. No. 80-029, approved and followed.)
2. Pursuant to R.C. 711.05, a board of county commissioners may, pursuant to rule, refuse to approve a plat for recording until the plat to be recorded contains accurate metes and bounds descriptions of the real property in the plat.
3. R.C. 5713.09 and R.C. 325.14 require the county engineer to make, correct, and maintain the county tax map.
4. R.C. 5713.13 and R.C. 5713.16 authorize the county auditor to modify recorded documents only in the limited circumstances described in R.C. 5713.13-.16.
5. R.C. 2719.02 permits persons or bodies corporate who have an interest in the correction of an error in a recorded document to correct the error by filing a petition in the county court of common pleas asking the court to issue an order for its correction.
6. A county that has not adopted a charter pursuant to R.C. 301.22 is not a body corporate, and may not file a petition to alter a recorded document under R.C. 2719.02.