

Note from the Attorney General's Office:

1964 Op. Att'y Gen. No. 64-1044 was overruled in part by
1971 Op. Att'y Gen. No. 71-083.

OPINION NO. 1044**Syllabus:**

1. An "original tract" within the meaning of Section 711.131, Revised Code, is a contiguous quantity of land held in common ownership which has not been platted by the existing owner or owners.

2. The term "completely subdivided" as used in Section 711.131, Revised Code, means a tract which is divided into as many lots as the subdivider intends for that tract.

3. Under Section 711.131, Revised Code, the further division of an original tract, which has been previously divided into five lots, requires the replatting of the original tract.

To: William H. Irwin, Belmont County Pros. Atty., St. Clairsville, Ohio
By: William B. Saxbe, Attorney General, May 14, 1964

I have before me your request for my opinion in which you ask the following:

"The Belmont County Engineer, R.J.B.,

has requested that I secure from you an opinion concerning your interpretation of the following questions relative to Section 711.131 of the Revised Code of Ohio:

"1. Is it proper to construe the words, 'original tract' as that which the subdivider actually owned when our Subdivision Regulations became effective, rather than what the subdivider originally owned?

"2. Mr. A. has twenty acres and sells Mr. B. five acres which is exempted in the definition of Subdivision (711.001,B). Mr. B. proposed to divide the five acres into five, one acre tracts under Section 711.131. Do you consider the original tract as the original twenty acres or is (sic) the five acres now owned by Mr. B. considered an original tract?

"3. Mr. X. has five acres and submits a sketch plat under Section 711.131 showing he proposed to subdivide the five acres into five various sized tracts, the largest of which is two and one-half acres. He conveys the two and one-half acres to Mrs. X. who then proposes to subdivide her two and one-half acre tracts into five, one half acre tracts under Section 711.131. In applying 711.131 to her two and one-half acre tracts, would not the original tract be considered to be the original five acre tracts?

"4. In regard to that portion which states, 'after the original tract has been completely subdivided', does it mean that for a tract to be completely subdivided, it would be subdivided into as many lots as feasibly proposed?

"5. For a tract to be completely subdivided, could it be further subdivided?

"6. In case of uncertainty on the part of the subdivider or if it is obvious to those administering the subdivision Regulations, that a tract would have more than five feasible building sites, may those administering the Subdivision Regulations, exercise their judgment as to whether there would be more than five lots after a tract has been completely subdivided?

"7. Some of the local bar association feel that Section 711.131 means that the first five lots may be sold without plat and the remaining lots by plat. Does not the phrase, 'and involving no more than five lots after the original tract has been completely subdivided', exclude the aforementioned contention."

Chapter 711, Revised Code, pertains to the platting of

land by the proprietor, within or adjacent to municipal corporations, or for the purpose of laying out a village, subdivision, or addition to a municipal corporation. Generally speaking the statutes require that a proprietor of lots or grounds in a municipal corporation or in unincorporated territory of the county which is subject to a plan by a county planning commission, who subdivides or lays them out for sale, make an accurate plat of such subdivision describing all streets, alleys, ways, commons or other public uses. Approval of such plats by a planning commission or legislative authority is required when the municipality or county has adopted a major plan for major streets or highways. The purpose of platting under this Chapter is to provide for the co-ordination of streets within a subdivision with existing streets and roads, for the proper amount of open spaces for traffic, circulation and utilities and for the avoidance of future congestion of population. While there is a relation between platting and zoning, the two are distinct and platting is not a substitute for zoning. It should be borne in mind at the outset that restrictions on the size of lots or related matters are properly within the scope of zoning ordinances and are not controlled directly by plats.

Section 711.131, Revised Code, contains an exception to the requirements that subdivisions of lots or land be platted, and provides 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 section 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." (Emphasis added)

The answers to your first three questions depend upon the meaning to be given to the term "original tract" as used in this section.

Neither the word "original" or the word "tract" is defined in Chapter 711, Revised Code. I am of the opinion, however, that "tract" refers to a contiguous quantity of

land undivided by lot lines. I further am persuaded that the word "original" contemplates a tract which has not been divided under its present ownership. An "original tract" then, under Section 711.131, supra, is a contiguous quantity of land held by one person, or in common ownership, which has not been platted by the existing owner or owners. A tract may be an original tract as to one owner but not another. While I am aware that this definition may permit de facto subdividing through successive ownership, I cannot infer that original means the initial source of a tract or parcel--which is its literal meaning--or that the legislature intended that an original tract be defined by time rather than by its composition or formation. As noted heretofore, platting is not for the purpose of controlling the size of lots, but for the purpose of insuring that there is coordination between existing streets and roads and those to be created, and of providing for orderly traffic and utility circulation. The exception extended in Section 711.131, supra, is only to parcels along existing public streets and not involving the opening, widening or extension of any street or road.

In answer to your first question, therefore, it is my opinion that "original tract" refers to land originally owned by the proprietor or subdivider and not that owned when local subdivision regulations became effective. I am further of the opinion, however, that Section 711.131, Revised Code, is not to be given retroactive application.

In reply to query number two, it is my opinion that Mr. B's five acres constitute an "original tract."

In response to query number three, I believe that the two and one-half acres of Mrs. X would be an "original tract" if in fact this is the tract that she first purchased or received title to.

Your fourth, fifth and sixth questions involve an interpretation of "completely subdivided." There is again, no statutory definition. I am compelled to conclude in the absence of a specific legislative definition that the language "completely subdivided" means a tract that is divided into as many lots as the subdivider intends for the tract. A subdivider may of course subsequently decide to increase the number of lots in a subdivision but to do so--and assuming there will be more than five lots resulting--it will be necessary to replat the original tract.

In response to query number four, I do not believe that a tract to be "completely subdivided" must be divided into as many lots as feasibly proposed but all lands within the original tract must be included within one of the subdivided lots.

In reply to question number five, it is my opinion that a tract "completely subdivided" can be further subdivided by any party who purchases or obtains title to a lot or parcel in the subdivision large enough to divide without conflicting with local platting, subdivision or zoning regulations.

In reply to question number six, it must be noted that Section 711.131, Revised Code, provides that a proposed divi-

sion "may be submitted to the authority having jurisdiction." Section 711.01, Revised Code, provides that any person may lay out a subdivision by causing a territory to be surveyed and by having a plat made. Section 711.05, Revised Code, provides that "upon submission of a plat for approval" the County Commissioner shall then approve or refuse to approve said plat. It is my opinion that there is no authority in Chapter 711, Revised Code, for any governmental body to "anticipate" further divisions of an original tract of a property owner.

In response to your seventh question, the ownership of four lots from an original tract may be transferred without plat unless the proprietor expresses an intent to further divide the remaining lot. In the event the owner further divides the lot remaining after the transfer of the first four lots, he is required to plat the original tract including the first four lots. A conclusion which follows because the exception in Section 711.131, *supra*, extends only where there are no more than five lots after the original tract has been completely subdivided. Thus, all lots in the original tract must be platted and approved before lot number five (assuming a part of the original tract is retained) may be recorded.

Obviously four lots will have already been transferred and the transfer recorded, and the approval or the failure to approve the plat will have no effect on these lots. The owner of the original tract, however, will be in the same position he would have been in had he not transferred the first four lots. Conceivably this could present some practical problems to the owner-subdivider but none that I can foresee which will be insolvable or which could not be avoided by a realistic projection of intended land use.

In specific answer to your questions, therefore, it is my opinion and you are advised that:

1. An "original tract" within the meaning of Section 711.131, Revised Code, is a contiguous quantity of land held in common ownership which has not been platted by the existing owner or owners.

2. The term "completely subdivided" as used in Section 711.131, Revised Code, means a tract which is divided into as many lots as the subdivider intends for that tract.

3. Under Section 711.131, Revised Code, the further division of an original tract, which has been previously divided into five lots, requires the replatting of the original tract.