

An examination of the warranty deed submitted by Sophia Stickney, shows that the same has been signed by her and otherwise properly acknowledged and executed. However, there is a manifest error in the description of the tract of land herein under investigation as the same is set out in said deed.

In said deed this property is described as beginning at a point upon the west line of Franklin street, now Longview street, in said village of Carthage, one hundred fifty (150) feet south of Second street, now seventy-first street "at the west corner" of what was formerly known as lot No. 98 in the original plan of the village of Carthage by Edward White. It is quite plain that where the words "west corner" were used in said description, the words "southeast corner" were intended; and before this deed is accepted by the State the same should be corrected as above indicated.

An examination of encumbrance estimate No. 5272, shows that the same in all respects has been properly executed and that there are sufficient balances in the proper appropriation account to pay the purchase price of this property.

I do not find with the files submitted to me a certificate showing that the controlling board has released the purchase price of this tract of land from the appropriation therefor, but I assume that such action has been taken by the controlling board and that the certificate with respect to said action has been returned to you with the files in connection with the sixty foot tract of land referred to and described in former Opinion No. 731 of this department, above mentioned.

I am herewith returning to you said abstract of title, warranty deed and encumbrance estimate.

Respectfully,
GILBERT BETTMAN,
Attorney General.

847.

CITY PLANNING COMMISSION—EXCLUSIVE JURISDICTION OF APPROVAL OF MAPS FOR TERRITORY WITHIN THREE MILES OF MUNICIPAL LIMITS.

SYLLABUS:

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.

COLUMBUS, OHIO, September 10, 1929.

HON. DUSTIN W. GUSTIN, *Prosecuting Attorney, Portsmouth, Ohio.*

DEAR SIR:—This will acknowledge the receipt of your recent communication, which reads as follows:

"With reference to House Bill No. 276, of 113th Ohio Laws, designated as General Code Sections 3583, and 3583-1:

It will be noted that in Section 3583, appears the following:

'Provided however, that no map certifying lands outside of a municipal corporation, wherein the proprietor shall dedicate public highways, shall be entitled to be recorded without the approval thereon of the county commissioners of the county wherein such lands are situated. * * *

Except, however, that nothing herein contained shall be construed to apply to such plats or maps as are required by General Code, Section 3586-1, to be approved by a city planning commission.'

This renders this section ambiguous, as in one place it states that any plat of ground outside of a municipality must be approved by the county commissioners, and then in the latter part states that any plat covering ground outside of a municipality, but within three miles of the city limits, are not included within the scope of this act.

It is our opinion that the act was for the purpose of having control rest with the county commissioners over the acceptance of the responsibility for roads and public highways in plats or maps outside of city limits, but that the three mile line immediately outside of city limits was intended to be covered also as subject to the approval of county commissioners, and the exception was intended to require in that three mile strip the assent of both the city planning commission and county commissioners.

We have several plats located within the three mile limit of the corporation line now pending, and would appreciate very much the earliest possible opinion on this point."

In considering the question which is presented in your communication, 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.

Section 3586-1 of the General Code of Ohio, provides:

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

The approval of the planning commission, platting commissioner or village council, required by this section, or the refusal to approve, shall take place within thirty days from and after the time of the submission of the plat for approval; otherwise such plat shall be deemed to have been approved, and the certificate of such planning commission, platting commissioner or of the clerk of such council as to the date of the submission of the plat for approval and the failure to take action thereon within such time, shall be issued on demand and shall be sufficient in lieu of the written endorsement or other evidence of approval herein required. The ground of refusal or approval of any plat submitted, including citation of or reference to the rule or regulation violated by the plat, shall be stated upon the record of the commission, commissioner or council.

Any planning commission, platting commissioner or village council may adopt general rules and regulations 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 the city or village plan or plats, 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 such rules and regulations shall not require the dedication to the general public of open grounds or spaces other than streets and ways, nor impose a greater minimum lot area than thirty-five hundred square feet, nor any requirement as to the minimum percentage of lot occupancy, nor as to the height, bulk, location or use of buildings; and minor streets shall not be required to be wider than fifty feet. Such rules and regulations shall be promulgated and published as is provided by law for the promulgation and publication of ordinances and before adoption a public hearing shall be held thereon and a copy thereof shall be certified by the commission to the county recorder of the county in which the municipality is located. Nothing herein contained shall be construed to impair, modify or postpone any power over or concerning the platting and subdivision of land or the recording of plats of subdivisions granted to a city or other planning commission by any other section of the General Code; but when a plan has been adopted as provided in this section the approval of plats provided for herein shall be in lieu of the approvals provided for by any other section or sections of the General Code, so far as territory within the approving jurisdiction of the planning commission, as provided in this section, is concerned."

The provisions of Section 3586-1, General Code, definitely prescribe the jurisdiction of a city planning commission which approval jurisdiction includes the territory within three miles of the corporate limits, providing that the planning commission has adopted a plan for the territory within three miles of the corporate limits of the municipality.

Sections 3583 and 3583-1 of the General Code, provide:

Sec. 3583. "After the plat or map is completed, it shall be certified by the surveyor, and acknowledged by the owner or owners before an officer authorized to take the acknowledgment of deeds, who shall certify his official act on the plat or map. If any owner is a non-resident of the state, his agent, authorized by writing, may make the acknowledgment. Such plat or map, and if the execution is by agent, his written authority, shall thereupon be recorded in the office of the county recorder. Provided, however, that no plat or map certifying lands outside of a municipal corporation, wherein the proprietor shall dedicate public highways, shall be entitled to be recorded without the approval thereon of the county commissioners of the county wherein such lands are situated, upon the filing of any such plat for record the approval of the county commissioners endorsed thereon shall operate as an acceptance and confirmation of the dedication of the public highways, contained therein, except, however, that nothing herein contained shall be construed to apply to such plats or maps as are required by Section 3586-1 of the General Code to be approved by a city planning commission."

Sec. 3583-1. "Upon the submission of a plat for approval, in accordance with the provisions of the preceding section, the county commissioners shall certify thereon the date of such submission, and the approval of the county commissioners required by the preceding section or the refusal to approve shall take place within 30 days thereafter; otherwise such plat shall be deemed to have been approved and shall thereafter be entitled to be recorded as is

bearing such approval. The county commissioners may adopt general rules and regulations governing plats and subdivisions of land falling within their 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 such rules and regulations shall not require the dedication to the general public of open grounds or spaces other than streets and ways, nor impose a greater minimum lot area than three thousand five hundred (3,500) square feet, nor any requirement as to the minimum percentage of lot occupancy, nor as to the height, bulk, location or use of buildings; and minor streets shall not be required to be wider than fifty (50) feet. The ground of refusal to approve any plat submitted in accordance with the provisions of the preceding section shall be stated upon the record of the county commissioners and within sixty (60) days thereafter the person submitting any plat which the county commissioners have refused to approve may file a petition in the Court of Common Pleas of the county wherein the land described in said plat is situated to review the action of the county commissioners."

Section 3583-1 of the General Code, grants to the county commissioners the right to adopt rules and regulations governing plats and subdivisions of land falling within their jurisdiction. It will be observed that the wording of the section granting such power to the county commissioners is identical with that of Section 3586-1 of the General Code granting powers to the city planning commission.

Section 4346 of the General Code of Ohio, provides that the Director of Public Service shall also be the platting commissioner of the city, who shall provide regulations governing the platting of all lands and require all streets and alleys to be the proper width and co-terminous with the streets and alleys. This same section provides that when any person plats any lands within three miles of the corporate limits of the city, the platting commissioner shall, if they are in accordance with the rules prescribed by him, endorse his written approval thereon, and no such plat of such land shall be entitled to record in the recorder's office without such approval endorsed thereon.

It might well be considered that the jurisdiction of the platting commissioner and the county commissioners is joint as to the plats of lands within three miles of the corporate limits of a city.

Section 4366, General Code, provides that the municipal planning commission shall be the platting commission of the municipality, and all the powers and duties provided by law for platting commissioner or commissioners of municipalities shall upon the appointment of a municipal planning commission be deemed transferred to such commission.

It would follow that where a planning commission has been appointed that their jurisdiction when acting as a platting commission is joint with the county commissioners. That is to say, if the planning commission has not adopted a plan for the territory with three miles of the corporate limits of a municipality or that part of the territory in question, the jurisdiction of the planning commission is that of the platting commission only. But, however, if the planning commission has adopted a plan for the territory within three miles of the corporate limits, then the jurisdiction of the planning commission is exclusive.

I am of the opinion that the Legislature, in passing Sections 3583 and 3583-1 of the General Code of Ohio, intended not to disturb the jurisdiction granted the city planning commission in Section 3586-1, General Code. It will be observed further, that Section 3586-1, General Code, provides in part:

“ * * * but when a plan has been adopted as provided in this section the approval of plats provided for herein shall be in lieu of the approvals provided for by any other section or sections of the General Code, so far as territory within the approving jurisdiction of the planning commission, as provided in this section, is concerned.”

Construing together Section 3586-1, General Code, with the exception contained in Section 3583, General Code, which provides :

“ * * * except, however, that nothing herein contained shall be construed to apply to such plats or maps as are required by Section 3586-1 of the General Code to be approved by a city planning commission.”

I am of the opinion that 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 for the territory within three miles of the corporate limits of the municipality.

Respectfully,
GILBERT BETTMAN,
Attorney General.

848.

DEED—LOST BY ORIGINAL GRANTEE OF LAND FROM STATE OF OHIO—
—CONDITIONS NECESSARY FOR GOVERNOR TO CONVEY PREMISES TO PRESENT CLAIMANTS.

SYLLABUS:

Under Sections 8525 and 8527, General Code, the Governor is not authorized to execute the deed of the State of Ohio therein provided for, conveying particular lands therein described to a named grantee thereon, unless it appears that a former deed of the State was duly executed under proper authority by which such lands were conveyed to such grantee or to his predecessor in title, that said former deed has been lost or destroyed without any record of said deed having been made, and that the full amount of the purchase money for said former conveyance has been paid.

COLUMBUS, OHIO, September 10, 1929.

HON. MYERS Y. COOPER, *Governor of Ohio, Columbus, Ohio.*

MY DEAR GOVERNOR:—This is to acknowledge receipt of your recent communication to me with which you enclosed a communication received by your office from Colton and Wendt, Attorneys-at-Law, Akron, Ohio, in which communication last above referred to, you are requested to execute deeds for parcels of Lots 251 and 252 in the town plat of Akron to take the place of a deed which is supposed to have been executed by the State of Ohio on or about February 1, 1844, by which said Lots 251 and 252 in the town plat of Akron were conveyed by the State to one Jedediah D. Commins, which deed is now lost.

An examination of the abstract of title which has been submitted with the communication of the attorneys above mentioned, shows that on May 13, 1826, the lots here in question, together with a number of other lots in the town plat of the then village of Akron were conveyed by one Paul Williams, then the owner of the same,