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THE LEGISLATIVE AUTHORITY OF A CITY MAY ADOPT RULES REGULATING THE ESTABLISHING STANDARDS AND SPECIFICATIONS FOR CONSTRUCTION OF STREETS—A CITY PLANNING COMMISSION MAY ADOPT A PLAN FOR THE PARKS OF A CITY WHICH WILL INCORPORATE LAND UP TO 3 MILES OUTSIDE THE CITY CORPORATION LIMIT—§711.09, R.C., 711.101, R.C., OPINION 847, OAG, 1929, OPINION 599, OAG, 1951, OPINION 7113, OAG, 1956.

SYLLABUS:

1. Pursuant to Section 711.101, Revised Code, the legislative authority of a city may adopt rules and regulations establishing standards and specifications for the construction of streets in the city or within three miles of the corporate limits thereof, and such rules and regulations may require compliance therewith as a condition precedent to the approval of a plat required by Section 711.09, Revised Code, by the city planning commission.

2. Under Section 711.09, Revised Code, a city planning commission may adopt a plan for the parks of the city or for the area within three miles of the corporate limits thereof, such plan designating what land will be set aside for park purposes; and may require, as a condition precedent to its approval of a plat, the dedication of a reasonable amount of land for park purposes.

Columbus, Ohio, July 27, 1962

Hon. Richard E. Bridwell, Prosecuting Attorney
Muskingum County, Zanesville, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“The City Planning Commission of Zanesville, Ohio, is now in the process of adopting a master plan of subdivision regulations

for the City of Zanesville and the territory within three (3) miles of its corporate limits under the authority of Section 711.09 of the Revised Code of Ohio.

"This office has recently received numerous inquiries pertaining to the interpretation of this statute which became effective in its present form on October 6, 1955.

"Most of the inquiries are concerned with the power of the City of Zanesville in the three mile area surrounding the City. The various questions can be summarized as follows: Is this power limited to the coordination of streets within the proposed subdivision with existing and planned streets within the City, or has the City now been given the right to establish standards for the actual construction of streets, together with the right to provide for parks and open public grounds within this area as a condition precedent to the approval of a plat of a proposed subdivision? In connection with the latter part of this question, does the City have the specific power to set aside certain land areas for parks?

"There apparently has not been any interpretation of this statute by the Attorney General since its last effective date. The last consideration of the statute, with respect to the question posed, was in Opinion No. 599, Opinions of the Attorney General for 1951. There have been certain changes and additions to the statute since this opinion was written which may overrule it. I refer specifically to the fifth paragraph of the statute.

"It is requested that your office render an opinion dealing generally with the powers and authority of the City of Zanesville in this three mile area upon the adoption of a master plan by the City Planning Commission. If the authority of the city has been extended by the changes and additions to the statute since the 1951 opinion, I would appreciate a general discussion as to how these changes would affect old and new subdivisions within this area, particularly with regard to roads, parks and utilities."

Section 711.09, Revised Code, dealing with the approval of plats in cities and villages, reads, in part, as follows:

"Whenever a city planning commission adopts a plan for the major streets or thoroughfares and for the parks and other open public grounds of a city or any part thereof, or for the territory within three miles of the corporate limits thereof or any part thereof, except a part of such territory, lying within a municipal corporation, then no plat of a subdivision of land within such city or territory shall be recorded until it has been approved by the city planning commission and such approval indorsed in writing on the plat. If such land lies within three miles of more than one city, then this section shall apply to the approval of the

planning commission of the city whose boundary is nearest to the land.

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"The planning commission, platting commissioner, or legislative authority of a village may adopt general rules and regulations governing plats and subdivision of land falling within its jurisdiction in order to secure and provide for the co-ordination of the streets within the subdivision with existing streets and roads or with the plan or plats of the municipal corporation, for the proper amount of open spaces for traffic, circulation, and utilities, and for the avoidance of future congestion of population detrimental to the public health or safety but shall not impose a greater minimum lot area than 4800 square feet. Such rules and regulations may provide for the modification thereof by such planning commission in specific cases where unusual topographical or other exceptional conditions require such modification.

"However, no city or village planning commission shall adopt any rules or regulations requiring actual construction of streets or other improvements or facilities or assurance of such construction as a condition precedent to the approval of a plat of a subdivision unless such requirements have first been adopted by the legislative authority of the city or village after a public hearing. Such rules and regulations shall be promulgated and published as provided by section 731.17 to 731.42, inclusive, of the Revised Code, and before adoption a public hearing shall be held thereon and a copy thereof shall be certified by the commission, commissioner, or such legislative authority, to the county recorder of the county in which the municipal corporation is located.

"* * * When a plan has been adopted as provided in this section the approval of plats shall be in lieu of the approvals provided for by any other section of the Revised Code, so far as territory within the approving jurisdiction of the commission, commissioner, or such legislative authority, as provided in this section, is concerned. * * *" (Emphasis added)

Section 711.101, Revised Code, allowing the legislative authority of a municipal corporation to adopt certain rules and regulations, reads as follows:

"As to land falling within its jurisdiction or the jurisdiction of its planning commission, the legislative authority of a municipal corporation, or the board of county commissioners, may adopt general rules and regulations setting standards and requiring and securing the construction of improvements shown on the plats and plans required by sections 711.05, 711.09 and 711.10 of the Revised Code.

“Such rules and regulations may establish standards and specifications for the construction of streets, curbs, gutters, sidewalks, street lights, water mains, storm sewers, sanitary sewers, and other utility mains, piping, and other facilities, may require complete or partial installation of such improvements, and may make such installations a condition precedent to the sale or lease of lots in a subdivision or the issuance of a building permit for the improvement of a lot, and may require in lieu of actual construction a performance agreement and the furnishing of a performance bond or other guarantee or security for the purpose of assuring the installation of such improvements deemed necessary or appropriate in the public interest. The legislative authority of a municipal corporation or the board of county commissioners may accept such performance bond or other guarantee or security, under such conditions and time limitations as it may determine. However, any actual construction or performance bond required by the legislative authority of a municipal corporation or board of county commissioners shall be limited to improvements and facilities directly affecting the lots to be improved or sold.

“Such rules and regulations may require the submission of plans and specifications for the improvements set forth in this section for approval as a condition precedent to the approval of a plat required by sections 711.05, 711.09, and 711.10 of the Revised Code, and may require the actual construction or agreement or assurance of such construction as a condition precedent to the approval required under said sections.

“* * *

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Where a city planning commission has adopted a plan for the major streets and thoroughfares and for the parks and other open public grounds of the city or any part thereof, or for the territory within three miles of the corporate limits thereof or any part thereof, all plats of subdivisions of land within such city and three mile territory must be approved by the city planning commission (Section 711.09, *supra*). And in this regard, the syllabus of Opinion No. 847, Opinions of the Attorney General for 1929, page 1302, reads as follows:

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

Regarding authority to adopt standards for the construction of streets, the third paragraph of the syllabus of Opinion No. 599, Opinions of the Attorney General for 1951, page 365, reads:

“3. Section 3586-1, General Code, giving the planning commission of a municipality authority to adopt rules and regulations governing plats and subdivisions of land falling within its jurisdiction, lying outside of, but within three miles of the corporate limits of such municipality, does not give such municipality any authority for establishing standards as to the construction of streets in such territory, and such authority is not found in any other provision of the General Code.”

Section 3586-1, General Code, considered in the 1951 opinion, is now Section 711.09, *supra*. Admittedly, that section does not give a planning commission the authority to adopt rules and regulations setting standards as to the construction of streets. Section 711.101, *supra*, does, however, allow the legislative authority of the municipal corporations to adopt rules and regulations as to land falling within the jurisdiction of its planning commission, setting standards and specifications for the construction of streets, and making compliance with such standards and specifications necessary for the approval of the plat required by Section 711.09, *supra*. As noted earlier, the jurisdiction of the city planning commission includes the city and the territory within three miles of the corporate limits thereof.

Said Section 711.101 was enacted effective October 6, 1955, and was not in existence at the time Opinion No. 599, *supra*, was issued (1951). It is now clear, however, that under the new section, a city, through its planning commission and legislative authority, may adopt standards for the construction of streets, and this includes streets in the three mile area.

As to “the right to provide for parks and open public grounds,” under Section 711.09, *supra*, a city planning commission may adopt a plan for “the major streets or thoroughfares and for the parks and other open public grounds of a city or any part thereof, or for the territory within three miles of the corporate limits thereof.” I interpret this to mean that the planning commission may adopt a plan for parks and other public grounds in the area of the city and in the area within three miles thereof.

In Opinion No. 7113, Opinions of the Attorney General for 1956, page 679, the second paragraph of the syllabus reads:

“2. A county or regional planning commission may, under the terms of Section 711.10, Revised Code, require, within the limits of its territorial jurisdiction, as a condition precedent to its approval of a plat, compliance with rules reasonably regulat-

ing the size of lots or requiring the dedication of a reasonable amount of land for park purposes.”

At pages 683 and 684 of Opinion No. 7113, *supra*, it is stated:

“Turning now to the second question of your request, I refer you to Section 711.10, Revised Code, which reads in pertinent part:

“ * * * * * ”

“Any such county or regional planning commission shall adopt general rules and regulations, of uniform application, governing plats and subdivisions of land falling within its jurisdiction, to secure and provide for the proper arrangement of streets or other highways in relation to existing or planned streets or highways or to the county or regional plan, for adequate and convenient open spaces for traffic, utilities, access of fire fighting apparatus, recreation, light, air, and for the avoidance of congestion of population. Such rules and regulations may provide for the modification thereof by such county or regional planning commission in specific cases where unusual topographical and other exceptional conditions require such modification.

“ * * * * * ’

(Emphasis added)

“The planning commission is granted the power to adopt rules and regulations to achieve stated purposes—that is, *inter alia*, to provide for recreation, light and air, and to avoid the congestion of population. I am unable to see how a planning commission could possibly achieve the purposes set forth if it could not regulate the size of lots and require the dedication of land for park purposes. There would be no question, I suppose that the dedication of land for streets can be required. The purpose of such dedication are those stated—that is, to provide for the movement of traffic, for the access of fire-fighting apparatus, etc. I see no reason to distinguish regulations for the achievement of such purposes from those to achieve other purposes prescribed in the same statute.”

The 1956 opinion was based on the provision giving the county or regional planning commission the power to adopt rules and regulations to provide for recreation, light and air, and to avoid the congestion of population. Under the fourth paragraph of Section 711.09, *supra*, the municipal planning commission may adopt rules and regulations “to provide for the proper amount of open spaces for * * * circulation * * * and for the avoidance of future congestion of population detrimental to the public health or safety.”

Accordingly, under the reasoning of the 1956 opinion, with which I concur, to allow for circulation, and to avoid congestion, the municipal planning commission must necessarily regulate the size of lots and, just as the county and regional commissions, must have the power to require the dedication of land for park purposes. Further, since the commission has the power to adopt a plan for the parks of the city, it must necessarily set forth which area is to be set aside for such purpose; recognizing, of course, that the rules and regulations of the commission must be reasonable in that regard.

To conclude, therefore, it is my opinion and you are advised:

1. Pursuant to Section 711.101, Revised Code, the legislative authority of a city may adopt rules and regulations establishing standards and specifications for the construction of streets in the city or within three miles of the corporate limits thereof, and such rules and regulations may require compliance therewith as a condition precedent to the approval of a plat required by Section 711.09, Revised Code, by the city planning commission.

2. Under Section 711.09, Revised Code, a city planning commission may adopt a plan for the parks of the city or for the area within three miles of the corporate limits thereof, such plan designating what land will be set aside for park purposes; and may require, as a condition precedent to its approval of a plat, the dedication of a reasonable amount of land for park purposes.

Respectfully,

MARK MCELROY

Attorney General