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SYLLABUS:

1. The County Commissioners have no authority to refuse to approve a plat of a subdivision on the ground that the roads or streets are to be private roads or streets.

2. The County Commissioners have authority to require the private roads of a subdivision, except those serving industrial structures, to be of the width required by their subdivision regulations, provided that such required width is in conformity with Sections 711.05, 711.10 and 711.101 of the Revised Code.

3. The subdivision regulations of the County Commissioners may require the developer to construct private roads according to specifications required in such regulations or post a performance bond guaranteeing such construction.

Columbus, Ohio, July 24, 1963

Hon. George E. Martin
Prosecuting Attorney
Portage County
Ravenna, Ohio

Dear Sir:

I have your request for my opinion which reads as follows:

"A question has arisen in our county regarding subdivision regulations of the County Commissioners, under Chapter 711 of the Revised Code of Ohio. Therefore, we would like your answer to the following questions:

"1. Can the County Commissioners refuse to approve a plat on the grounds that the roads are to be private roads?

"2. If not, can they require the private roads to be of the width required by their subdivision regulations?

"3. Can these subdivision regulations require the developer to construct private roads to specifications required in the subdivision regulations or post a performance bond guaranteeing such construction?

"Our County Commissioners have adopted subdivision regulations in accordance with Chapter 711 and are now in the process of revising these regulations.

"Your answer to these questions is desired so that the new regulations may be completed."

“Plat” and “Subdivision” are defined as follows in Sections 711.001, Revised Code:

“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, 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.”

The statutory language in the above quoted sections of the Revised Code includes street or streets without any qualification as to whether they are public or private and the only exemption is “except private streets serving industrial areas.” Thus, any other private streets must be included in the plat of the subdivision.

I concur with Syllabus No. 1, Opinion No. 5260, Opinions of the Attorney General for 1955:

“The plat of a proposed subdivision must designate whether the roads shown thereon are intended for public or private use.”

Sections 711.01 and 711.02, Revised Code, stating the required contents of a plat, include streets, alleys and roads without any qualification that they must be for public use.

Section 711.01, Revised Code:

“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.”

Section 711.02, Revised Code:

“In-lots intended for sale shall be numbered in progressive numbers, or by the squares in which situated, and their precise length and width shall be stated on the plat provided for in section 711.01 of the Revised Code. Out-lots which do not exceed ten acres in size shall, in like manner, be surveyed and numbered, and their precise length and width stated on the plat, together with any streets, alleys, or roads which divide or border on them.”

Section 711.05, Revised Code, entitled “Approval or rejection; rules to govern plats” is set forth below:

“Upon the submission of a plat for approval in accordance with section 711.04 of the Revised Code, the board of county commissioners shall certify thereon the date of such submission, and the approval of the board required by such section or the refusal to approve shall take place within thirty days thereafter or such further time as the applying party may agree to; otherwise such plat is deemed approved and may be recorded as if bearing such approval. The board 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. Where under the provisions of section 711.101 of the Revised Code 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 and regulations may require the submission of appropriate plans and specifications for approval. The ground of refusal to approve any plat, submitted in ac-

cordance with section 711.04 of the Revised Code 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."

Section 711.05, Revised Code, prior to the 1953 Amendment, which was effective only from October 1, to October 18, 1953, contained language which apparently would have given County Commissioners authority to refuse approval of a plat if all streets were to be private streets or ways. However, such language is conspicuously absent from Section 711.05, Revised Code, as it presently exists.

The County Commissioners have no such statutory authority to refuse approval of a plat on the herein referred to basis. The Commissioners are, by the statute granted rule-making power only for the "* * * co-ordination of the streets within the subdivision with existing streets and roads or with existing county highway, 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. * * *"

My reasoning is further substantiated by Section 711.13, Revised Code, last paragraph, which reads as follows:

"* * * * * * * *"

"The sale of lots, parcels or tracts from a plat of a subdivision on which any and all areas indicated as streets or open grounds are expressly indicated as for the exclusive use of the abutting or other owners in such subdivision and not as public streets, ways, or grounds shall not serve to exempt the seller from the requirements of this chapter or from the forfeiture herein provided."

It is clear from this language that the legislative authority of the state contemplated the submission of plats for approval by county commissioners containing only private streets.

Accordingly, it is clear that County Commissioners have no authority to refuse approval of a plat because the roads are to be private roads. It is likewise clear, beyond the need for a recitation

of authority, that administrative rules may not add to or subtract from legislative enactments.

The answers to your second and third questions are derived from a careful analysis of Sections 711.05, *supra*, and 711.101, Revised Code:

Section 711.101, provides:

“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 installation 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.

“Such rules and regulations may provide for the administration thereof by the regulation body or by a city, county, or regional planning commission having platting jurisdiction over the land affected and may provide for the modification thereof in specific cases, where unusual or exceptional factors or conditions require such modifications, by such body or commission.

“The board of county commissioners may prepare such specifications and make such orders, inspections, examinations and certificates as are necessary to carry out the provisions of this section. The county engineer and the county sanitary engineer shall act in an advisory capacity to the board in preparing such specifications, orders, inspections, examinations, and certificates.

“Before the adoption or amendments of rules and regulations pursuant to this section, a public hearing shall be held thereon by the legislative authority of the municipal corporation or the board of county commissioners, as the case may be.”

Section 711.101 of the Revised Code authorizes the county commissioners to adopt regulations for the construction of streets, without qualification as to whether the streets are private or public, curbs, gutters and other improvements and facilities and may require a performance bond guaranteeing the installation of such improvements “deemed necessary or appropriate in the public interest,” but limits such bond to the construction of “improvements and facilities directly affecting the lots to be improved or sold.”

Obviously such statute requires that the bond must be for the construction of improvements for the benefit of the prospective residents of the lots as well as for the public interest. Certainly properly constructed streets, whether public or private, are for the interests of both.

Therefore, it is my opinion and you are advised:

1. The County Commissioners have no authority to refuse to approve a plat of a subdivision on the ground that the roads or streets are to be private roads or streets.

2. The County Commissioners have authority to require the private roads of a subdivision, except those serving industrial structures, to be of the width required by their subdivision regula-

tions, provided that such required width is in conformity with Sections 711.05, 711.10 and 711.101 of the Revised Code.

3. The subdivision regulations of the County Commissioners may require the developer to construct private roads according to specifications required in such regulations or post a performance bond guaranteeing such construction.

Respectfully,
WILLIAM B. SAXBE
Attorney General
