S T A T E O F T E N N E S S E E
OFFICE OF THE
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Opinion No. 07-121

Authority to Subdivide Property within County

QUESTIONS

1. a. If a regional planning commission in a county has adopted a requirement that any person who proposes to subdivide land must submit a surveyor's plat of the proposed subdivision to the planning commission for its review and approval, is the county commission in that county authorized to enact a resolution that would permit a land-owning parent to convey a one-acre portion of a larger tract to a child without having the plat submitted to and approved by the regional planning commission?

b. If the regional planning commission also requires the surveyor's plat reflecting the subdivision to be recorded in the county register's office, is the county commission authorized to exempt this transfer from parent to child from the recordation requirement?

2. Does Tenn. Code Ann. § 13-3-410(a) apply to a transfer of a one-acre piece from property of a parent to a child where such a transfer is not a sale or transfer "by reference to or exhibition of or by other use of a plat of subdivision of such land"?

3. Assuming the county is authorized to exempt the initial transfer from the parent to the child, would the child be required to file a surveyor's plat and record it to sell or transfer it in the future?

OPINIONS

1. a. No statute of general applicability authorizes a county commission to exempt a subdivision from approval by the regional planning commission.

b. No statute of general applicability authorizes a county commission to enact such a resolution.

2. A transfer that is not made by reference to or exhibition of or by other use of a plat of subdivision of such land is not subject to this statute.

3. In light of our answer to Question 1, Question 3 is moot.

ANALYSIS

1. Subdivision of Land in Area Subject to Regional Plan

a. Approval by Regional Planning Commission

This opinion concerns the authority of a county commission to exempt a particular land transfer from requirements imposed under a regional plan adopted by a regional planning commission. Regional planning commissions are created and operate under Tenn. Code Ann. §§ 13-3-101, *et seq.* Under that statutory scheme, the Tennessee Department of Economic and Community Development may create and establish planning regions and define the boundaries of each region. Tenn. Code Ann. § 13-3-102. Generally, a regional planning commission is required to make and adopt a general regional plan for the physical development of the territory of the region. Tenn. Code Ann. § 13-3-301(a). Once a regional planning commission has adopted and filed its plan with the county register of the county or counties that lie in whole or in part in the region, then the regional planning commission must approve any plat of a subdivision of land in the region that is not within a municipal boundary before the plat may be filed with the county register. Tenn. Code Ann. § 13-3-402. Where a plat of subdivision divides the tract into no more than two lots, the statute provides that the plat may be approved by the commission secretary after certification by the staff. *Id.*

Except for counties within a narrowly defined population bracket, the term "subdivision" means:

> the division of a tract or parcel of land into two (2) or more lots, sites, or other divisions requiring new street or utility construction, *or any division of less than five (5) acres for the purpose, whether immediate or future, of sale or building development*, and includes resubdivision and, when appropriate to the context, relates to the process of resubdividing or to the land or area subdivided.

Tenn. Code Ann. § 13-3-401(4)(B) (emphasis added). The first question is whether a county commission may, by resolution, exempt a parent's transfer of a one-acre portion of a larger lot to a child from the requirement of approval by the regional planning commission. As described, this transfer appears to meet the first part of the italicized definition above because it transfers a one-acre portion of a larger lot to another individual. This Office has concluded in the past that a division of land that creates a parcel of property containing less than five acres from a larger tract of land is a "subdivision" within the meaning of this statute. Op. Tenn. Att'y Gen. U91-19 (February 20, 1991). The exception for divisions of land partitioned among the owners does not appear to apply. Tenn. Code Ann. § 13-3-408. Assuming the transfer is for the purpose, whether immediate or future, of sale or building development, it is subject to approval by the regional planning commission. Whether the transfer is for this purpose depends on the particular facts and circumstances. No statute of general applicability authorizes a county commission to exempt a subdivision from approval by the regional planning commission.

b. Recordation Requirement

The second question concerns recording requirements. Under Tenn. Code Ann. § 13-3-402(a)(1), once a regional planning commission has filed a regional plan including a major road plan with the county register:

> then no plat of a subdivision within such region, other than land located within the boundaries of any municipal corporation, shall be filed for record or recorded until it has been approved by such regional planning commission, and such approval endorsed in writing on the plat by the secretary of the commission or by another designee of the regional planning commission.

Under Tenn. Code Ann. § 13-3-402(c):

> No county register shall receive, file or record a plat of a subdivision, or an amendment, modification, or correction to a recorded plat of a subdivision, without the approval of the regional planning commission when and as required by this part.

The second question is whether a county commission may, by resolution, require a county register to accept for filing the plat of a subdivision that has not been approved by the regional planning commission. No statute of general applicability authorizes a county commission to enact such a resolution.

2. Criminal Penalties under Tenn. Code Ann. § 13-3-410(a)

The next question concerns the applicability of Tenn. Code Ann.§ 13-3-410. Tenn. Code Ann. § 13-3-410(a) provides in relevant part:

> Whoever, being the owner or agent of the owner of any land, transfers or sells or agrees to sell or negotiates to sell such land *by reference to or exhibition of or by other use of a plat of subdivision of such land* without having submitted a plat of such subdivision to the regional planning commission and obtained its approval as required by this part and before such plat is recorded in the office of the appropriate county register, or who falsely represents to a prospective purchaser of real estate that roads or streets will be built or constructed by the county or other political subdivision, commits a Class C misdemeanor.

(Emphasis added). The county, through its county attorney or other official designated by the county commission, may enjoin such transfer or sale or agreement by action or injunction. *Id.* The request asks whether Tenn. Code Ann. § 13-3-410(a) applies to a transfer of a one-acre piece from property of a parent to a child where such a transfer is not a sale or transfer "by reference to or exhibition of or by other use of a plat of subdivision of such land." Statutes that are penal or penal in nature and criminal or quasi-criminal laws must be strictly construed in favor of citizens against

whom they are sought to be applied. *State v. Levandowski*, 955 S.W.2d 603, 604 (Tenn. 1997). For this reason, a transfer that is not made by reference to or exhibition of or by other use of a plat of subdivision of such land is not subject to this statute.

3. Subsequent Transfers

The last question is whether, assuming the county is authorized to exempt the initial transfer from the parent to the child, the child would be required to file and record a surveyor's plat in order to sell or transfer the land in the future. In light of our answer to Question 1, this question is moot.

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