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FILE NO. S-1228

COUNTIES:

Power of Certain Counties
to Regulate Plats of Land
Located Within Municipalities

Honorable Dennis P. Ryan
State's Attorney
Lake County
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Dear Mr. Ryan:

This responds to your letter requesting that I supplement my opinion No. S-1155, issued September 27, 1976. I stated there that a county subject to section 25.9a of "AN ACT to revise the law in relation to counties" (Ill. Rev. Stat. 1975, ch. 34, par. 415) has the power to require county approval of plats of land located within the corporate limits of the county's municipalities. I further advised

Honorable Dennis P. Ryan - 2.

that such a county could properly direct the county recorder not to record such a plat without county approval.

You now raise three other questions regarding the effect of the proviso in the last sentence of section 25.9a of "AN ACT to revise the law in relation to counties" (Ill. Rev. Stat. 1975, ch. 34, par. 415). The section provides:

"In any county with a population not in excess of 500,000 located in the area served by the Northeastern Illinois Metropolitan Planning Commission, to establish by ordinance or resolution of record reasonable rules and regulations governing the location, width and course of streets and highways, and the provision of public grounds for schools, parks or playgrounds, in any map, plat or subdivision of any block, lot or sub-lot or any part thereof or any piece or parcel of land in the county, which rules and regulations may include such reasonable requirements with respect to water supply and sewage collection and treatment, and such reasonable requirements with respect to street drainage and surfacing, as may be established by the county board as minimum requirements in the interest of the health, safety and convenience of the public of the county; and to require by ordinance or resolution of record that any map, plat or subdivision shall be submitted to the county board or some officer to be designated by the county board for its or his approval in the manner provided in Section 25.09 of this Act, and to require bonds and charge fees as provided in Section

Honorable Dennis P. Ryan - 3.

25.09 of this Act. Provided, however, that the location, width and course of local streets and of facilities relative to the local distribution of water and other local municipal facilities shall be subject to the exclusive control of and approval by the municipality."

Your first question is whether the county is limited to regulating "the location, width and course of streets and highways, and the provision of public grounds for schools, parks or playgrounds, . . ." as expressly provided in this section or whether the county has broader powers in reviewing plats. It is my opinion that the county is limited to establishing only those regulations that are set forth in the statute. Lake county is a non-home rule county. The powers of a non-home rule county are limited by section 7 of article VII of the Illinois Constitution of 1970 to those granted by law. Section 7 of article VII of the Illinois Constitution of 1970 provides in part:

"Counties and municipalities which are not home rule units shall have only powers granted to them by law * * *"

There is no grant of power to the county board which enables them to broaden the powers set forth in the statute. There-

Honorable Dennis P. Ryan - 4.

fore the county is limited to those powers that are described in the statute.

Your second question is under what circumstances may the county refuse to approve a plat of land within a municipality when the plat has been approved by the municipality. It is my opinion that the only circumstances under which the county may refuse to approve a plat are those set forth in the statute. The county is to establish reasonable rules and regulations governing streets, highways, public grounds for schools, parks and playgrounds and to establish minimum requirements in the interest of the health and safety and convenience of the public of the county in relation to water supply, sewage collection and treatment, street drainage and surfacing. However, the county's powers are limited by the proviso in the last sentence of section 25.9a:

"* * * Provided, however, that the location, width and course of local streets and of facilities relative to the local distribution of water and other local municipal facilities shall be subject to the exclusive control of and approval by the municipality."

That proviso specifically withholds from the county any power to disapprove a plat within a municipality on the basis

Honorable Dennis P. Ryan - 5.

of the location, width, and course of local streets and of facilities relative to the local distribution of water and other local municipal facilities. These matters are subject to the exclusive control and approval of the municipality.

In addition, Division 12 of article 11 of the Illinois Municipal Code (Ill. Rev. Stat. 1975, ch. 24, pars. 11-12-4 through 11-12-12) is of relevance to this question. Section 11-12-4 of the Illinois Municipal Code provides that every municipality may create a plan commission or planning department. The general powers of the planning commission or department are provided for in section 11-12-5:

"

* * *

(1) To prepare and recommend to the corporate authorities a comprehensive plan for the present and future development or redevelopment of the municipality. * * * Such plan may be implemented by ordinances (a) establishing reasonable standards of design for subdivisions and for resubdivisions of unimproved land and of areas subject to redevelopment in respect to public improvements as herein defined; (b) establishing reasonable requirements governing the location, width, course, and surfacing of public streets and highways, alleys, ways for public service facilities, curbs, gutters, sidewalks, street lights, parks, playgrounds, school grounds, size of lots to be

Honorable Dennis P. Ryan - 6.

used for residential purposes, storm water drainage, water supply and distribution, sanitary sewers, and sewage collection and treatment;
* * *

Section 11-12-11 of the Illinois Municipal Code provides as follows:

"If a municipality has adopted an official plan or map pursuant to the authority granted by this Division 12, the territory subject to that plan shall be exempt from the application of any less restrictive rules or regulations adopted by a County Board under the provisions of Section 25.09a of an Act to Revise the Law in Relation to Counties, approved March 31, 1874, as amended."

Under this section, if a municipality has adopted an official plan or map pursuant to Division 12, plats for territory subject to the plan are exempt from the less restrictive rules and regulations of the county board.

I am therefore of the opinion that when a proposed plat would violate the reasonable rules and regulations set by the county board, the county may refuse to approve it unless the violation relates to matters left to the exclusive control and approval of the municipality, or unless the plat is exempt from the county rules and regulations under Division 12 of article 11 of the Illinois Municipal Code.

Honorable Dennis P. Ryan - 7.

Your third question is what the term "other local municipal facilities" includes. The county has no power to disapprove plats based on the location of such facilities. While the courts have recognized that "municipal" may have a variety of meanings referring to both a municipality and a municipal corporation, the courts have also adopted the definition given in Bouvier's Law Dictionary, "Strictly, this word applies to what belongs to a city". See Bd. of Educ. v. Home Real Estate Corp. (1941), 378 Ill. 298, 306 and The People v. Bergman (1912), 253 Ill. 469, 470. This plus the context convince me that the term "other local municipal facilities" refers only to those that are provided or controlled by a municipality. Parks and schools would not be considered local municipal facilities when they are controlled by an independent park district or school district.

Very truly yours,

A T T O R N E Y G E N E R A L