



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable Holvey Williams
Criminal District Attorney
Waco, Texas

Dear Sir:

Opinion No. O-2108

Re: Authorization by County Commissioners' Court in addition to approval of City Planning Commission, or of governing body where no Planning Commission exists, must be shown before County Clerk is authorized to file or record a plat of subdivision in said county, lying outside of, but within 5 miles of, city of 25,000 or more population.

We quote from your letter of March 19, 1940, in which you request the opinion of this department, as follows:

"A plat of a subdivision located within five miles of the corporate limits of the City of Waco, Texas, a city which contains 25,000 inhabitants or more according to the last federal census for the purpose of laying out suburban lots or building lots, streets, alleys and other portions intended for public use, has been submitted to the County Clerk of McLennan County for record, the said plat having heretofore been approved by the City Commission of the City of Waco in compliance with Article 974A of the Revised Civil Statutes of Texas.

"Under the above circumstances, would it be proper and lawful for the County Clerk of McLennan County, Texas, to file and record the

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aforesaid instrument without it having been approved and authorized by the Commissioners' Court of McLennan County, Texas?"

Under Article 974a, Vernon's Civil Statutes, it is provided, substantially, that plats or replats of subdivisions outside of, but within five miles of, the corporate limits of a city containing 25,000 or more inhabitants according to the last Federal Census, or of a smaller city or town which has, by majority vote of its qualified voters, adopted the provisions of this Article, must be approved, and bear an endorsement to that effect, by the City Planning Commission, or, if no Planning Commission exists, by the governing body of such city or town, in addition to being acknowledged as provided therein, before such plat may be lawfully filed or recorded by the County Clerk of the County within which such subdivision lies. See *Hollis v. Parkland Corporation* (Comm. App., Sec. A, 1931), 40 S. W. (2d) 53.

Article 974a, together with Penal Code Article 427b, making it a misdemeanor for the County Clerk to accept for registration a plat which does not meet these requirements, were enacted by the 40th Legislature as Chapter 231, Acts 1927, Page 342.

Subsequently, the 42nd Legislature amended Article 6626, which had previously read as follows:

"The following instruments of writing which shall have been acknowledged or proved according to law, are authorized to be recorded, viz: all deeds, mortgages, conveyances, deeds of trust, bonds for title, covenants, defeasances or other instruments of writing concerning any lands or tenements, or goods or chattels, or movable property of any description,"

by adding the following:

"provided, however, that in cases of subdivision or re-subdivision of real property no map or plat of any such subdivision shall be filed or recorded unless and until the same has been authorized by the Commissioners' Court of the County in which the real estate is situated by order duly entered in the minutes of said Court, except in case of partition or other subdivision through a Court of

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record; provided, that within incorporated cities and towns the governing body thereof in lieu of the Commissioners' Court shall perform the duties hereinabove imposed upon the Commissioners' Court," (See Acts 1931, 42nd Leg., p. 371, Ch. 217.)

Article 1137b of the Penal Code, enacted by the same Legislature which amended Article 6626, makes it a misdemeanor for anyone to file or record any such map or plat without previously securing approval therefor as provided by law. (Acts 1931, 42nd Leg., p. 266, ch. 160.)

Chapter 217, Acts 1931, (Article 6626 as amended) makes no exception in regard to the situation governed by Article 974a, nor does it repeal any of the provisions of Article 974a.

We see no conflict between the provisions of these two Articles in regard to the situation you set forth, but even should such be apparent, we would be bound, under recognized rules of statutory construction, to reconcile and harmonize the conflict if possible, where, as here, the statutes are in *pari materia*. *Bishop v. Houston Independent School District*, 119 Tex. 403, 29 S. W. (2d) 312.

"It is a settled rule of statutory interpretation that statutes which deal with the same general subject, have the same general purpose, or relate to the same person or thing, are considered as '*in pari materia*'. (in relation to the same matter), although they contain no reference to one another, and although they were passed at different times or at different sessions of the Legislature.

"In order to arrive at a proper construction of a statute, and determine the exact legislative intent, all acts and parts of acts in pari materia will, therefore, be taken, read and construed together, each enactment in reference to the other, as though they were parts of law. Any conflict between their provisions will be harmonized, if possible, and effect will be given to all provisions of each act if they can be made to stand together and have concurrent efficacy." 39 Tex. Jur. 253, Sec. 135, and cases cited.

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A correlative rule of statutory construction is that repeal of statutes by implication is never favored nor presumed. Townsend v. Terrell, 118 Tex. 463, 16 S. W. (2d) 1063.

"Where there is no express repeal, the presumption is that in enacting a new law the Legislature intended the old statute to remain in operation." 39 Tex. Jr. 141; Cole v. State ex rel. Cobolini, 106 Tex. 472, 170 S. W. 1036.

Construing the two statutes together, then, we find that before the County Clerk may lawfully file or record the plat in question, such plat must be authorized by the Commissioners' Court of his County in the manner provided in Article 6626, in addition to meeting the requirements as to acknowledgment and the requirements as to approval by the City Planning Commission, or, if none exists, by the governing body, of such city or town in the manner provided in Article 974a.

It is, therefore, the opinion of this department and you are so advised that under the facts set forth in your letter, as quoted above, it would not be proper nor lawful for the County Clerk of McLennan County to file and record the plat in question unless and until the same has been authorized by the Commissioners' Court of that County in the manner provided in Article 6626.

Trusting that we have fully answered your inquiry, we are

Yours very truly

APPROVED APR 1, 1940
Garrett B. Owen
ATTORNEY GENERAL OF TEXAS

ATTORNEY GENERAL OF TEXAS
By *Robert E. Kepke*
Robert E. Kepke
Assistant
By *Peter Maniscalco*
Peter Maniscalco

PA:BBB

