



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable Dan W. Jackson
District Attorney
Houston, Texas

Dear Mr. Jackson:

Attention - Mr. Conrad J. Landram

Opinion No. 0-8180
Re: Whether or not voluntary partition deeds come within the statutes regulating the registration of plats or maps, Articles 6626 and 674a of the Revised Civil Statutes, Vernon's Codification.

Your letter requesting the opinion of this department on the question above captioned reads in part as follows:

"This renews our request for an opinion as to whether or not Article 6626 applies to the following classes of instruments and requires the approval by the Commissioners' Court.

"A voluntary partition deed covering property outside of the city limits of an incorporated city and town wherein co-tenants partitioned the common property in the segregated parcels and allot to each one or more of the parcels accompanied by a map prepared by a surveyor showing the outside boundary lines of the several parcels and the boundary lines of the new subdivision. The several parcels, of course, constitute a new subdivision of the common property but no more so than the ordinary partition deed between co-owners.

"In some instances the plat provides for a new road dedicated to the public but not all of them do and this inquiry relates to both types of partition deeds."

Article 6626 is 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 and chattels, or movable property of any description; provided, however, that in cases of subdivision or re-subdivision of real property no map or plat of any such subdivision or re-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 cases of partition or other subdivision through a Court of 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."

Article 974a -- Vernon's Codification -- insofar as pertinent is as follows:

"Sec. 1. That hereafter every owner of any tract of land situated within the corporate limits or within five miles of the corporate limits of any city in the State of Texas, * * * who may hereafter subdivide the same in two or more parts for the purpose of laying out any subdivision of any such town, or city, or any addition thereto, or any part thereof, or suburban lots or building lots, or any lots, and streets, alleys, parks or other portions intended for public use, or for the use of purchasers or owners of lots fronting thereon or adjacent thereto, shall cause a plat to be laid which shall accurately describe all of the subdivisions of such tract or parcels of land, giving dimensions thereof, and the dimensions of all the streets,

Honorable Dan W. Jackson - page 3

alleys, squares, parks, or other portions of same intended to be dedicated to public use, or for the use of purchasers or owners of lots fronting thereon or adjacent thereto.

* * * *

"Sec. 3. That it shall be unlawful for the County Clerk of any county in which such land lies to receive or record any such plan, plat or replat, unless and until the same shall have been approved by the City Planning Commission of any city affected by this Act, if said city have a City Planning Commission and if it have no City Planning Commission, unless and until the said plan, plat, or replat shall have been approved by the governing body of such city. If such land lies outside of and within five miles of more than one city affected by this Act, then the requisite approval shall be by the City Planning Commission or governing body, as the case may be, of such of said cities having the largest population. * * *

"Sec. 4. If such plan or plat, or replat shall conform to the general plan of said city and its streets, alleys, parks, playgrounds and public utility facilities, including those which have been or may be laid out, and to the general plan for the extension of such city and of its roads, streets and public highways within said city and within five miles of the corporate limits thereof, regard being had for access to and extension of sewer and water mains and the instrumentalities of public utilities, and if same shall conform to such general rules and regulations, if any, governing plats and subdivisions of land falling within its jurisdiction as the governing body of such city may adopt and promulgate to promote the health, safety, morals or general welfare of the community, and the safe, orderly and healthful development of said community * * *, then it shall be the duty of said City Planning Commission or of the governing body of such city, as the case may be, to endorse approval upon the plan, plat or replats submitted to it." (S. B. No. 277, 40th Leg. p. 342).

Honorable Dan W. Jackson - page 4

When these statutes are considered together as they should be -- related as they are -- it is our conclusion that partition deeds executed by co-tenants for the purpose of effecting a partition of land does not come within their meaning. Whether the partition deed is or is not executed by including in the instrument a map, plat or delineation whatsoever of the land thus partitioned, will not change our holding.

The obvious purpose of the statutes was to regulate the common practice of laying out subdivisions or additions of suburban lands so as to bring about a conflict with the planning, platting and delineation of the streets, alleys, parks, lots and the like of the city to which such subdivision or addition is adjacent. Such a matter involves a public interest, whereas a mere partitioning of lands between or among co-tenants involves solely a matter of personal right and not of public concern.

What we have said answers both phases of your inquiry.

We have confined this opinion to a consideration of the precise questions presented by you.

Very truly yours

APPROVED JUL 29, 1943
Boonville

ATTORNEY GENERAL OF TEXAS

FIRST ASSISTANT
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BY

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OS-LR

