



WILLIAM J. SCOTT
ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD

September 27, 1976

FILE NO. S-1155

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

Honorable Jack Hoogasian
State's Attorney
County of Lake
County Building
Waukegan, Illinois 60085

Dear Mr. Hoogasian:

This responds to your letters wherein you state that the Lake County Board has adopted a resolution to the effect that the county recorder is not to record any plat, including a plat of land located within the corporate limits of a municipality, unless it has been approved by the plat committee of the county board. You ask whether the Lake County Board has the power to require its approval of plats of territory located within municipalities, and whether it can instruct the recorder not to record those it has not approved.

Honorable Jack Hoogasian - 2.

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. The power of county boards to require the submission of plats for county approval is derived from sections 25.09 and 25.09a of "AN ACT to revise the law in relation to counties". Ill. Rev. Stat. 1975, ch. 34, pars. 414 and 415.

Section 25.09 provides that county boards have the power:

"To prescribe by resolution, reasonable rules and regulations governing the location, width and course of streets, highways and storm or floodwater runoff channels and basins, and the provision of necessary 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, not being within any city, village or incorporated town, * * * and to provide by resolution that the map, plat or subdivision shall be submitted to the county board or to some officer to be designated by the county board for their or his approval. * * * "

It is evident from this passage that the intent of the legislature was to provide those counties governed by section 25.09 with the power to require the submission of plats of land located outside municipal limits for county approval. The power to regulate plats of land located inside municipalities

Honorable Jack Hoogasian - 3.

is not granted. The division of functions between municipalities and county authorities within such counties with regard to the regulation of plats is set out in section 13 of "AN ACT to revise the law in relation to recorders". (Ill. Rev. Stat. 1975, ch. 115, par. 13.) It provides in part:

"No person shall offer or present for recording or record any map, plat or subdivision of land situated in any incorporated city, town or village, nor within 1 1/2 miles of the corporate limits of any incorporated city, town or village which has adopted a city plan and is exercising the special powers authorized by Division 12 of Article 11 of the Illinois Municipal Code, as heretofore and hereafter amended, and not included in any municipality unless the map, plat or subdivision is under the seal of a registered Illinois land surveyor and unless it is entitled to record as provided in Sections 11-15-1 and 11-12-3 of the Illinois Municipal Code, as heretofore and hereafter amended. * * * [N]or shall any person offer or present for recording or record any map, plat or subdivision of land situated outside any incorporated city, town or village unless the map, plat or subdivision is under the seal of a registered Illinois land surveyor, and unless it is entitled to record as provided in Section 25.09 of 'An Act to revise the law in relation to counties'. * * * "

It therefore is evident that in those counties governed by section 25.09 the approval of plats of territory located within municipalities is a matter exclusively for the municipal authorities. See Peterson v. City of Naperville, 9 Ill. 2d 233.

Honorable Jack Hoogasian - 4.

Lake County, however, because it is within the area served by the Northeast Illinois Metropolitan Planning Commission, is governed by section 25.09a rather than 25.09. Section 25.09a provides that the county board has the power:

"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, * * * 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 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."

It is apparent from a comparison of sections 25.09 and 25.09a, that the powers given those counties in the Northeast Illinois Metropolitan Planning area with populations of less than 500,000, are somewhat different than those given the other counties of the State. Most significant, for purposes

Honorable Jack Hoogasian - 5.

of your question, is the fact that section 25.09a does not limit the county board's regulatory power to plats of land "not being within any city, village or incorporated town" as does section 25.09. Instead, it seems clear that those counties that qualify, including Lake County, have the power to regulate plats of land located anywhere in the county and to require that all plats of land within the county be submitted to the county authorities for their approval.

This conclusion is supported in my opinion by the last sentence of section 25.09a, quoted above, which was added in 1959. If the legislature had not intended to grant the general power to regulate plats of land located within municipalities to certain counties in section 25.09a, this limited reservation of exclusive power to municipal authorities would not have been necessary.

It is therefore my opinion that, pursuant to section 25.09a of "AN ACT to revise the law in relation to counties", Lake County has the power to require county approval of plats of land located within the corporate limits of the county municipalities.

Given the power of the Lake County Board to require its approval of all plats of land located within the county,

Honorable Jack Hoogasian - 6.

you want to know if the county board can order the recorder not to record any plat which does not receive county approval.

A similar question was dealt with by my predecessor in his opinion No. F-2043. (1968 Ill. Att'y. Gen. Op. 136.) The issue there was the nature of a recorder's duty under section 13 of "AN ACT to revise the law in relation to recorders", quoted above. My predecessor concluded that a recorder was under a duty not to record a plat or a subdivision unless it had been approved by municipal or county authorities as provided for in section 13.

The situation confronting my predecessor in that opinion is, of course, distinguishable from the one you describe in that section 25.09a of "AN ACT to revise the law in relation to counties" rather than section 25.09 is involved here, and section 25.09a is not specifically mentioned in section 13 of the recorders statute. This does not, in my opinion, call for a different result, however.

Section 4(d) of article VII of the Illinois Constitution of 1970 states:

"County officers shall have those duties, powers and functions provided by law and those provided by county ordinance. County officers shall have the duties, powers or functions derived from common law or historical precedent unless altered by law or county ordinance."

Honorable Jack Hoogasian - 7.

More specifically, section 25.34 of "AN ACT to revise the law in relation to counties" (Ill. Rev. Stat. 1975, ch. 34, par. 429.18) provides:

"No county board may alter the duties, powers and functions of county officers that are specifically imposed by law. A county board may alter any other duties, powers or functions or impose additional duties, powers and functions upon county officers. In the event of a conflict State law prevails over county ordinance.

This amendatory Act of 1972 does not apply to any county which is a home rule unit."

It is evident based on the above authority that a county board has the power to enlarge the duties of the county recorder. This is, in my opinion, exactly what the Lake County Board has done here by requiring the recorder to determine whether or not a plat has county approval as provided for by section 25.09a. It has simply passed an ordinance imposing a duty on the county recorder in those counties subject to section 25.09a comparable to that imposed on the recorder in counties covered by section 25.09 by section 13 of the recorders statute.

It is therefore my opinion that the Lake County Board has the power to impose a duty on the county recorder not to record plats which do not have county approval. This conclusion is in line with my opinion No. NP-1020, issued December 16, 1975, in which I stated that a recorder may refuse to record an

Honorable Jack Hoogasian - 8.

instrument which fails to comply with statutory requirements for its recording, as long as the decision as to compliance does not call for the exercise of any discretion on the recorder's part.

Very truly yours,

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