

Therefore, it is my opinion, in answer to your question, that the provisions of Enrolled Senate Bill 115 enacted into law will be effective for the entire fiscal year 1966-1967 if Enrolled Senate Bill 115 takes effect on or before March 15, 1967. If Enrolled Senate Bill 115 takes effect after March 15, 1967, none of its provisions will be effective for the fiscal year 1966-1967.

FRANK J. KELLEY,
Attorney General.

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PLATS: Requirements of plat act — authority of county plat board.

A county plat board which does not regularly employ a county plat engineer and which has not also been vested by the county board of supervisors with authority to determine whether the lands are suitable for platting purposes may only exact compliance with other statutory requirements as a condition to approval of the plat. While township boards and legislative bodies of cities and villages are vested with unconditional authority to determine whether the lands included within a plat are suitable for platting purposes, a county plat board is not authorized to adopt a rule requiring as a condition to the approval of a proposed plat that the proprietor either: (1) Fill the property to a suitable level above the water table; or (2) File a performance bond with the board conditioned upon the making of such fill upon the lots in said plat before the sale of the respective lots to a third person.

No. 4457

September 27, 1966.

Mr. John B. Daugherty
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You have requested my opinion regarding the authority of the Benzie County plat board to require the taking of certain action by the proprietor as a condition to the approval of a proposed plat. Your request states:

"In certain instances, property located in Benzie County and otherwise suitable for platting has a water table so close to the surface of the ground that installation of septic tanks and dry wells on the property could constitute a health hazard. To remedy this situation, it has been proposed that the County Plat Board adopt a rule requiring as a condition to the approval of proposed plats that the proprietors either 1) fill the property to a suitable level above the water table prior to platting or, 2) file a performance bond with the County Plat Board that suitable fill will be placed upon the platted lot before sale of same to any third person. Because this proposal would require that the proprietor expend money for the improvement of private property, I question the authority of the Board to impose these conditions.

"There appears to be no specific answer in either the Plat Act or in any of the cases or opinions of the Attorney General construing the Act. While Section 19 of the Act requires that the governing body determine whether the lands are suitable for platting purposes, and permits certain action to be taken with regards to providing for private roads, neither Section 19, 19A, 20, 23, 24 nor any other section of the Act empower the Board to require the proprietor to upgrade his private property in the manner described, or to require bond for performance of the same, as a condition to approval of a proposed plat.

Act 172, P.A. 1929,¹ the plat act of 1929, provides in Sections 28² and 29:³

"Sec. 28. Whenever any plat is submitted to the county plat board it shall carefully examine the same to determine whether or not the caption of the plat conflicts in any way with the title or caption of any other plat previously recorded in the office of the register of deeds, and also for the purpose of ascertaining whether or not the streets and alleys in such plat conform, in their opinion, to the streets and alleys of any adjoining plat or plat in the immediate vicinity, if in their opinion the streets of plats in immediate vicinity are properly located, and are so named that no name previously in use in the same municipality shall be made use of, except in continuing a street or alley, and as to whether the highways and streets on the plat conform in location and width to plans for state trunk lines and federal aid roads on file in said office.

"Sec. 29. If, upon examination of a plat, a majority of the county plat board shall find that the title or caption does not conflict with that of any other plat, not vacated, recorded in such county, and the streets and alleys do conform to those of any adjoining plat or a plat in the immediate vicinity theretofore recorded of streets properly located, and that streets and alleys conform to plans on file in the office of the register of deeds for state trunk line and federal aid roads, and to county plan, if any, and are so named that no name previously in use in the same municipality shall be made use of except in continuing a street or alley, and that the plat conforms to requirements of this act and conforms to rules that the board may have adopted under the provisions of this act relative to plats, the board shall endorse its approval thereon by the signatures of a majority thereof but, if otherwise, shall reject said plat within 20 days. If a plat is rejected for not being in conformity with the requirements of this act, the county plat board shall give written notice of such rejection and its reasons therefor to the proprietor within said 20-day period: Provided further, In counties where the county plat board regularly employs a county plat engineer, that

¹ C.L. 1948 and C.L.S. 1961 § 560.1, et seq.; M.S.A. 1953 Rev. Vol. and M.S.A. 1965 Cum. Supp. § 26.431, et seq.

² C.L. 1948 § 560.28; M.S.A. 1953 Rev. Vol. § 26.458.

³ C.L.S. 1961 § 560.29; M.S.A. 1965 Cum. Supp. § 26.459.

the board of supervisors may authorize, by resolution, the county plat board to determine as to whether the lands are suitable for platting purposes, with the right to reject any plat in which the land does not conform to the requirements adopted by the county plat board relative thereto."

It will be noted that the authority of the county plat board to determine whether the lands are suitable for platting and to reject any plat in which the land does not conform to the requirements adopted by the board relative thereto is contingent as specified in the proviso in Section 29 upon the regular employment of a county plat engineer by the board and the adoption of an authorizing resolution by the county board of supervisors. In answer to my specific inquiry you have advised this office that the county plat board does not employ a county engineer. However, the board of county supervisors on November 8, 1965, adopted resolution:

"* * * that the clerk be authorized to request the Plat Board to set up specifications for determining the suitability of land for platting. Motion carried."

The statutory requirement imposing the two conditions is in the conjunctive. Fulfillment of both conditions is a prerequisite to the vesting of such authority in the plat board. I am, therefore, in accord with your conclusion that inasmuch as the board does not employ a plat engineer, such provision is not effective to authorize the board to determine whether lands are suitable for platting and the rejecting of a plat in which the land does not conform with the requirements adopted by the board with relation thereto.

As pointed out by you, township boards and the legislative body of cities and villages are vested with unconditional authority to determine whether the lands included within the plat are suitable for platting purposes and also to reject the plat if it determines that adequate storm drainage facilities are not available or if the lands are wholly or in part within the flood plain of a river, stream, creek, or lake.⁴ Those bodies are also authorized to require the proprietor to make certain improvements on the property and to post either a cash deposit or surety bond to guarantee their completion. It is significant that such authority is limited to township boards and the legislative body of cities and villages rather than county plat boards. Likewise, the legislative body of any city or village is authorized to require by ordinance the installation of improvements not specifically required by the act.⁵

Section 29 also specifies that the county plat board shall endorse its approval upon the plat if the board determines inter alia that the plat "conforms to requirements of this act and conforms to rules that the board may have adopted under the provisions of this act relative to plats."

⁴ C.L.S. 1961 §§ 560.19 and 560.19a; M.S.A. 1965 Cum. Supp. §§ 26.449 and 26.449(1).

⁵ C.L. 1948 § 560.22; M.S.A. 1953 Rev. Vol. § 26.452. O.A.G. 1959-60, Vol. 1, No. 3422, p. 143.

However, Act 172 neither contains any provision specifically authorizing the county plat board to adopt rules nor makes other reference to any such authority. Decisions of the Supreme Court of Michigan⁶ and other states⁷ contain statements to the effect that administrative agencies have the implied authority to adopt such reasonable rules as may be necessary for the efficient exercise of the powers granted them. The law of Michigan is not well settled as to the extent of any such implied authority. However, it is unnecessary to decide whether such implied authority would extend to rules other than those prescribing the practice and procedure to be followed before the county plat board. Adoption of a rule imposing the requirement such as suggested by your letter as a condition to approval of the plat would in effect add to the statutory requirements for platting. The statute confers no such authority upon the county plat board. The Michigan Court in *Coffman*, cited above, quoted with approval at page 589 from the decision of the Supreme Court of California in *California Drive-In Restaurant Association*:

““It is true that an administrative agency may not, under the guise of its rule-making power, abridge or enlarge its authority or exceed the powers given to it by the statute, the source of its power. * * * However, ‘the authority of an administrative board or officer, * * * to adopt reasonable rules and regulations which are deemed necessary to the due and efficient exercise of the powers expressly granted cannot be questioned. This authority is implied from the power granted.’””

A county plat board which does not regularly employ a county plat engineer and has not also been vested by the board of county supervisors with authority to determine whether lands are suitable for platting purposes may only exact compliance with the statutory requirements as a condition to approval of the plat.⁸ It follows that such a county plat board is not authorized to adopt a rule imposing the suggested requirement as a condition to its approval of proposed plats.

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Attorney General.

⁶ *Coffman v. State Board of Examiners in Optometry*, (1951) 331 Mich. 582, 589.

⁷ *California Drive-In Restaurant Association, et al., v. Clark, et al.*, (1943) 22 Cal. 2d 287, 302-03; 140 P. 2d 657, 665.

⁸ *Leonard-Hillger Land Co. v. Wayne County Board of Auditors*, (1918) 203 Mich. 466. See also *Ridgmont Development Company v. City of East Detroit*, (1960) 358 Mich. 387.