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**SUBDIVISION CONTROL ACT: Court ordered partitions.**

The Subdivision Control Act does not apply to a court ordered partition which does not have as its purpose the sale or lease of more than one year of the parcels involved.

Opinion No. 4857

February 5, 1975.

Honorable Donald E. Bishop  
State Senator  
The Capitol  
Lansing, Michigan 48902

In a letter to this office you requested an opinion as to the applicability of the Subdivision Control Act, 1967 PA 228, MCLA 560.101 *et seq*; MSA 26.430(101) *et seq*, to the following situations:

"1. If 4 persons own a continuous tract of land 37.9 acres in area and it is divided into 4 parcels of less than 10 acres in area through a partition order of the Circuit Court, is such a division subject to the provisions of the Act?

"2. If the resulting parcels are redivided into smaller parcels, at what point are the resulting divisions affected by the provisions of the Act?

"3. In the event, there had been six heirs, and a suit for partition had been brought, would the Court have been estopped from ordering a partition without a compliance with the subdivision control act, assuming that each of the parcels created by the Court in the partition action were less than 10 acres in size? In that event, would the only alternative of the Court be to order a judicial sale of the property?"

The section of the Subdivision Control Act relevant to the questions raised is MCLA 560.102(d); MSA 26.430(102)(d), which provides as follows:

" 'Subdivide' or 'subdivision' means the partitioning or dividing of a parcel or tract of land *by the proprietor thereof or by his heirs, executors, administrators, legal representatives, successors or assigns for the purpose of sale*, or lease of more than one year, or of building development, where the act of division creates 5 or more parcels of land each of which is 10 acres or less in area; or 5 or more parcels of land each of which is 10 acres or less in area are created by successive divisions within a period of 10 years." [Emphasis added]

Although this office has never issued a formal opinion as to the applicability of the current Subdivision Control Act, 1967 PA 288, *supra*, to a court-ordered partition, a formal opinion on this question was issued by this office when its predecessor, the Plat Act, 1954 PA 186, was in force. The Plat Act was repealed by the Subdivision Control Act. Under the Plat Act "subdivide" was defined as follows:

" . . . the partitioning or dividing of a lot, tract or parcel of land into 5 or more lots, tracts or parcels of land. . . ."

In I OAG, 1955, No 2106, p 413 (August 12, 1955), this office determined that a court-ordered partition of land into 5 or more lots fell under the provisions of the Plat Act. The opinion noted that the provisions of the Plat Act did not apply to the State; that is, the Plat Act did not prohibit subdividing by operation of the law without complying with the platting requirements. However, the opinion reasoned that since the applicability of the Plat Act was not predicated upon a division for any particular purpose or set of purposes, a court order which was merely an affirmation of a previous agreement between the parties to the action was not sufficiently governmental in nature to deprive the act of subdividing of its essential character as an act of the parties, as distinguished from an act of the State.

As noted above, the 1955 opinion was based upon the now repealed Plat Act. The definition of "subdivide" contained in § 102(d) of the Subdivision Control Act is substantially different from the definition contained in the Plat Act, since under the Subdivision Control Act a subdivision is created only when a division is made for one of a specified set of purposes.

In a letter opinion to Mr. Jerome D. Farmer, Assistant Prosecuting Attorney, Washtenaw County, dated October 5, 1973, this office was called upon to determine whether a court-ordered partition resulted in a violation of the Subdivision Control Act. At that time it was determined that if the partition was based upon a lawsuit, then the Act was not violated.

Under the facts as you have presented them, if the court-ordered division of the tract into 4 parcels is the result of a lawsuit as to the division, then in this situation each of the 4 parcels created by court order would become a "parent" parcel, each of which may be divided into no more than 4 parcels each of 10 acres or less in area.

Thus, the answer to all three questions which you have raised is that the Subdivision Control Act does not apply to a court-ordered division unless the arm of the court has been enlisted to partition the parcel for the purpose of selling or leasing for more than one year the divided parcels. The parcels which are created by a bona fide court-ordered partition each become a "parent" parcel and each parcel so created may be divided into up to 4 parcels each of 10 acres or less in area without compliance with the Subdivision Control Act.

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