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SUBDIVISIONS: Retroactivity of Subdivision Control Act of 1967.

STATUTES: Retroactivity.

MUNICIPALITIES: Subdivision Controls.

A subdivision of land effectuated before the effective date of the Subdivision Control Act of 1967 may not be considered in calculating the number of divisions of land permitted by the terms of the Act.

A municipality may permit partitioning of lots in a recorded plat into not more than 4 parts subject to the limitation that, if the parcel is not served by public water and sewer systems, the minimum width and area of the resulting lots must conform to those of the Act.

Opinion No. 4893

October 3, 1975.

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You have requested an opinion concerning the implementation of the provisions of the Subdivision Control Act of 1967, 1967 PA 288; MCLA 560.101 *et seq*; MSA 26.430(101) *et seq*. According to your letter, the Oakland County Plat Board has refused to approve a lot division for the sole reason that by including divisions made before January 1, 1968, the proposed division would exceed the number of divisions permissible under the provisions of the Subdivision Control Act of 1967, *supra*, without the necessity of filing a plat. Your question has been restated as follows:

Under the Subdivision Control Act of 1967, should subdivisions effectuated before January 1, 1968 be considered in calculating the number of divisions permissible under the terms of the Act without requiring the submission of a plat?

1967 PA 288, *supra*, § 293; MCLA 560.293; MSA 26.430(293), expressly provides that "This [subdivision control] Act [of 1967] shall take effect on January 1, 1968." Consequently, the Act was not effective before January 1, 1968 and has no application to partitions or divisions made before that date.

A letter opinion to representative Roy Smith dated December 19, 1967 discussed the inapplicability of the Subdivision Control Act of 1967 to subdivisions created before January 1, 1968, which were controlled instead by the Plat Act of 1929, 1929 PA 172; MCLA 560.1 *et seq*; MSA 26.431 *et seq*. The following relevant conclusions were reached in that opinion:

"The platting provisions of the subdivision control act of 1967 are only applicable to subdivisions of land effected after the effective date of that act as there is no express provision in the act making it retroactive, nor does an intent of retroactive application follow from necessary implication. *Ramey v. Michigan Public Service Commission*, 296 Mich 449 (1941), and *Detroit Trust Company v. City of Detroit*,

269 Mich 81 (1934). To the contrary the plat act of 1929, which contains similar platting provisions, will remain in effect until repealed by the subdivision control act on its effective date. . . .

* * *

“ . . . [I]t is my opinion that if a proprietor of a tract of land can establish that it was divided into 10-acre parcels for purposes of sale prior to January 1, 1968, he is not subject to the platting requirements of the subdivision control act of 1967 because such subdivision would be effected before the effective date of that act.” [at p 2]

A similar question was answered in a subsequent letter opinion to Senator William Faust, dated March 30, 1972, wherein the following observations were made:

“Both the Plat Act of 1929, *supra*, and Subdivision Control Act of 1967, *supra*, permit the creation of up to four lots without a plat having to be filed. You ask whether the creation of seven lots in the manner described above (three within the exception under the original legislation and four within the exception under the latter legislation) is permissible. We hold that such practice is proper. There is nothing in the latter Act which indicates that exempt lots under the former Act must be considered when counting the number of divisions when the latter Act is in effect.” [at p 2]

It is therefore clear that subdivisions created prior to the January 1, 1968 effective date of the Subdivision Control Act of 1967, *supra*, should not be considered when applying the provisions of the Act to subdivisions made after the effective date of the Act. Your question is answered in the negative.

Your letter also makes reference to § 263 of the Act; MCLA 560.263; MSA 26.430(263), which reads as follows:

“No lot, outlot or other parcel of land in a recorded plat shall be further partitioned or divided unless in conformity with the ordinances of the municipality. The municipality may permit the partitioning or dividing of lots, outlots or other parcels of land into not more than 4 parts; however, any lot, outlot or other parcel of land not served by public sewer and public water systems shall not be further partitioned or divided if the resulting lots, outlots or other parcels are less than the minimum width and area provided for in this act.”

Thus, the municipality is empowered to vary the minimum restrictions of the Act to the extent allowed by this section. Your letter, however, gives no indication that the township ordinance imposes any conditions or limitations differing from those in the Act itself. Consequently, the Subdivision Control Act of 1967 affords no basis upon which the Oakland County Plat Board may properly refuse to approve the proposed subdivision.

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Attorney General.