



WILLIAM J. SCOTT

ATTORNEY GENERAL
STATE OF ILLINOIS
500 SOUTH SECOND STREET
SPRINGFIELD

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S-768

COUNTIES:
Subdivision Plats

Honorable Robert E. Richardson
State's Attorney
LaSalle County
Ottawa, Illinois 61350

Dear Mr. Richardson:

I have your letter in which you state:

"I am requesting an opinion for clarification concerning House Bill 438, approved September 6, 1973, effective October 1, 1973, which was an amendment to the Plat Act. This provides for an exemption along the sale of a single lot of less than 5 acres from a larger tract, but does not apply to the sale of any subsequent lots from the larger tract of land.

My questions are:

1. Is a 'Plat of Survey' required (as distinguished from a 'Subdivision Plat')?
2. After the sale of the single lot of less

than 5 acres under exemption No. 9, can the purchaser subsequently sell a single lot of less than 5 acres from his recently purchased tract?

3. If a property owner divides his land once prior to October 1, 1973, as provided in exemption No. 8, can he, after October 1, 1973, sell a single lot of less than 5 acres, as provided in exemption No. 9?"

Section 1(a) of "AN ACT to revise the law in relation to plats" (Ill. Rev. Stat. 1973, ch. 109, par. 1(a)) provides in part:

"§ 1. (a) Except as otherwise provided in subparagraph (b) of this Section, whenever the owner of land subdivides it into 2 or more parts, any of which is less than 5 acres, he must have it surveyed and a plat thereof made by a Registered Land Surveyor, which plat must particularly describe and set forth all public streets, alleys, ways for public service facilities, parks, playgrounds, school grounds or other public grounds, and all the tracts, parcels, lots or blocks, and numbering all such lots, blocks or parcels by progressive numbers, giving their precise dimensions. There shall be submitted simultaneously with the subdivision plat, a study or studies * * * ."

Public Act 78-553 amended section 1(b) of "AN ACT to revise the law in relation to plats" (Ill. Rev. Stat. 1973, ch. 109, par. 1(b)) by adding subsection 9 of section 1(b):

"§ 1. (b) The provisions of this act do not apply

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and no plat is required in any of the following instances:

* * *

9. The sale of a single lot of less than 5 acres from a larger tract when a survey is made by a registered surveyor; provided, however, that this exemption shall not apply to the sale of any subsequent lots from the same larger tract of land, as determined by the dimensions and configuration of the larger tract on the effective date of this amendatory Act of 1973." (Emphasis added)

In your first question you ask whether, under exemption 9 of section 1(b), a "plat of survey" is required as distinguished from a "subdivision plat". Exemption 9 can apply only "when a survey is made by a registered surveyor". By definition, exemption 9 is an exemption from compliance with the requirement of section 1(a), which, in turn, requires that a "subdivision plat" be made. It is, therefore, my opinion that all that is required, under exemption 9, is a plat of survey made by a registered surveyor which contains a sufficient legal description of the boundaries of the smaller tract conveyed under the exemption. No subdivision plat is required as that is specifically exempted under the statute.

In your second question you ask whether, after there has been a sale of a single lot of less than 5 acres under

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exemption 9, the purchaser of the lot can subsequently sell a single lot of less than 5 acres from his recently purchased tract, and thereby exempt the transaction from the requirements of section 1(a). In other words, as I understand your question, you wish to know whether the purchaser can take advantage of exemption 9 in a subsequent sale of a part of the lot he has just purchased.

Exemption 9 contains a proviso which reads: "provided, however, that this exemption shall not apply to the sale of subsequent lots from the same larger tract of land, as determined by the dimensions and configuration of the larger tract on the effective date of this amendatory act."

It would thus appear that the answer to your question depends on the meaning of the phrase "larger tract". It is my opinion that the phrase "larger tract" refers to the entire tract of land as it existed on October 1, 1973, prior to any sale of a single lot.

Generally, the words used in a statute should be given their plain and ordinary meaning. Words should also be

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given the meaning intended by the lawmakers, enlarged or restricted according to the true intent. Lincoln Nat. Life Ins. Co. v. McCarthy, 10 Ill. 2d 489.

To give effect to the intention of the legislature, the object and purpose to be attained, and the evils sought to be remedied, should be looked to in construing the statute. Craig v. Peterson, 39 Ill. 2d 191; People v. Mastasio, 19 Ill. 2d 524.

In the particular section presently under scrutiny, the exemption reads: "The sale of a single lot * * * from a larger tract". The use of the word "from" indicates that the "larger tract" is the entire tract including the portion to be sold to the purchaser. This tract is referred to in the proviso as the "same larger tract" as it existed on October 1, 1973.

Since the purchaser's parcel or tract is a part of the larger tract as it existed on October 1, 1973, no subsequent sale of a lot less than 5 acres from the smaller lot may be made without meeting the requirements of section 1 of the Plat Act.

Furthermore, this reading of the statute complies with the intent and purpose of the Plat Act. It has been held that the purpose of the Plat Act is to require the submission

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of plats to governmental approval to insure that adequate provision has been made for streets, alleys, parks, and other public facilities indispensable to the particular community affected. Weber v. Skokie, Cook County, 92 Ill. App. 2d 355; Bluett v. County of Cook, 19 Ill. App. 2d 172.

To hold that subsequent purchasers could take repeated advantage of exemption 9 would be to permit the subdivision of tracts of land through successive sales without ever requiring recordation of a subdivision plat.

With regard to your third question, exemption 8 of section 1(b) of "AN ACT to revise the law in relation to plats" provides:

"8. The sale or exchange of parcels or tracts of land following the division into no more than 2 parts of a particular parcel or tract of land existing on July 17, 1959 and not involving any new streets or easements of access."

It should be noted that exemptions 1 through 9 of section 1(b) apply to particular "instances" or transactions. Thus, a property owner can, in successive sales, or divisions, take advantage of a different exemption in each transaction, so long as the exemption applies in each instance.

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Thus, if a landowner, prior to October 1, 1973, divides his land into no more than two parts, and sells one parcel, and otherwise complies fully with exemption 8 (i.e., the entire tract existed on July 17, 1959, and involves no new streets or easements of access), then he may thereafter sell a lot of less than 5 acres from the parcel he has retained, so long as he complies fully with the provisions of exemption 9.

It is, therefore, my opinion that, after dividing his land under exemption 8, prior to October 1, 1973, a landowner may thereafter sell a single lot of less than 5 acres pursuant to exemption 9.

Very truly yours,

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