



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

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FILE NO. 96-008

COUNTIES:

Use of Motor Fuel Tax
Funds for Nondedicated
Subdivision Roads

Honorable Gary W. Pack
State's Attorney, McHenry County
McHenry County Government Center
2200 North Seminary Avenue
Woodstock, Illinois 60098

Dear Mr. Pack:

I have your letter wherein you inquire regarding the meaning of the term "nondedicated subdivision roads", for purposes of section 5-701.15 of the Illinois Highway Code (605 ILCS 5/5-701.15 (West 1994)). For the reasons hereinafter stated, it is my opinion that the term "nondedicated subdivision roads" in section 5-701.15 refers only to those roads which were denoted as such on a subdivision plat filed prior to July 23, 1959, which have not been dedicated to the public.

Section 5-701.15 of the Illinois Highway Code provides:

"The formula allocation for counties for the distribution of motor fuel tax funds, provided for in Section 8 in the "Motor Fuel Tax Law", may be used by the county board for

the maintenance or improvement of nondedicated subdivision roads established prior to July 23, 1959. Any such improved road becomes, by operation of law, a part of the township or district road system in accordance with Section 6-325 of this Code. The county board shall condition its approval, as required by this Section, upon proportional matching contributions, whether in cash, kind, services or otherwise, by property owners in the subdivision where such a road is situated. No more than the amount of the increase in allocation of such funds allocated under the formula as provided in Section 8 in the "Motor Fuel Tax Law" which is attributable to this amendatory Act of 1979 and any subsequent amendatory Act and subsequently approved as provided in this Section, may be expended on eligible nondedicated subdivision roads."

Based upon its plain language, section 5-701.15 is applicable only to roads that are part of a "subdivision", that are "nondedicated", and that were "established" prior to July 23, 1959.

The primary purpose of statutory construction is to ascertain and give effect to legislative intent. (People v. Zaremba (1994), 158 Ill. 2d 36). To that end, the history of legislation and the course it has taken are proper matters to be considered. (Acme Fireworks Corp. v. Bibb (1955), 6 Ill. 2d 112.) Further, it is proper to consider statutes on related subjects, although not strictly in pari materia. Scotfield v. Board of Education of Community Consol. School Dist. No. 181 (1952), 411 Ill. 11.

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Section 5-701.15 was added to the Highway Code by Public Act 81-3 (Second Special Session), effective September 19, 1979. During the course of the legislative debate regarding the amendment which became section 5-701.5, Representative Skinner, its sponsor, explained that it was made applicable only to subdivisions that were platted before July 23, 1959, because after that date counties were not allowed to plat subdivisions that did not have decent roads. (Remarks of Rep. Skinner, September 5, 1979, House Debate on Senate Bill 889, pp. 203-207.) The date of July 23, 1959, appears to refer to an Act approved on that date which added a section to the statute governing counties, requiring that counties served by the Northeastern Illinois Metropolitan Planning Commission adopt rules for the approval of plats, including minimum standards for streets. (Laws 1959, p. 2134) The counties referred to by Representative Skinner during debate are in the area to which that Act was applicable. Essentially the same provision now appears at section 5-1042 of the Counties Code (55 ILCS 5/5-1042 (West 1994)). Section 2 of the Plat Act (765 ILCS 205/2 (West 1994)) also permits counties to establish requirements for the approval of plats.


Generally, the Plat Act (765 ILCS 205/0.01 et seq. (West 1994)), which has been in effect for more than 100 years, requires that when land is subdivided into parts of less than 5 acres, a survey must be made and a plat prepared and recorded.

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The filing or recording of a plat, and the acceptance by public authorities of streets, alleys, or other public grounds marked thereon, results in transfer of title to the public authority and dedication of those streets, alleys or other grounds. (765 ILCS 205/3 (West 1994).) However, no rights are transferred, and no dedication made, absent acceptance, either express or implied, by the public authority. (LaSalle National Bank v. City of Chicago (1974), 19 Ill. App. 3d 883, 886). Therefore, subdivisions, and the streets within them, are generally established by plats which are filed or recorded. Streets within subdivisions may be dedicated or nondedicated depending upon whether they are so marked on the plat and whether they are accepted by the appropriate public authority.

Based upon the legislative history of section 5-701.15 and its relationship to the provisions of the Plat Act, it is my opinion that the term "nondedicated subdivision roads" in section 5-701.15 refers only to nondedicated roads in subdivisions concerning which a plat was filed or recorded prior to July 23, 1959.

Sincerely,


JAMES E. RYAN
Attorney General