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FILE NO. S-697

COUNTIES:
Subdivision Plats

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Honorable Edward P. Drolet
State's Attorney
Kankakee County
Courthouse
Kankakee, Illinois

Dear Mr. Drolet:

I have your letter in which you state:

'The Recorder of Deeds of Kankakee County has posed a question regarding the conduct of his office in compliance with the provisions of the Plat Act, as follows:

'The Plat Statute (Section 1, Chapter 109, Illinois Revised Statutes) provides in part as follows:

Except as otherwise provided * * * 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,
* * *

and further prohibits the Recorder of Deeds to record deeds or leases which attempt to convey property contrary to the provisions of the Act. (Section 5a, Chapter 109, Illinois Revised Statutes)

My attention has been called to a recent decision, Gricius vs. Lambert, 7 Ill. App. 3rd, (October 12, 1972) which appears to establish by implication an exception to the statutory prohibition not spelled out in the statute, - that a deed of less than 5 acres should be accepted for recording, if the conveyance does not contemplate the establishment of public accesses or facilities.

In view of this recent Appellate Court decision, shall I accept for recording conveyances of less than 5 acres of land not establishing public accesses or facilities?'

To the present time, the Recorder has refused to accept any deed of real property for recording, which conveyed less than 5 acres of land out of a larger tract, pursuant to the statute, unless accompanied by an Affidavit setting forth one or more of the exceptions spelled out in the Plat Act.

Where the deed of conveyance tendered for recording does not, on its face, establish any new public access or facilities, is that deed entitled to recording, without the establishment of an exception set forth in the Act?"

Section 1 of "AN ACT to revise the law in relation to plats" (Ill. Rev. Stat. 1971, ch. 109, par. 1), to which your Recorder of Deeds has referred, was amended twice by the 78th General Assembly. (Illinois Legislative Service 1973 Laws, P.A. 78-553, 78-567.) Neither amendment, however, changed said section's basic requirement that:

> "(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. * * * "

Judicial construction of "AN ACT to revise the law in relation to plats" (Ill. Rev. Stat. 1959 and 1969, ch. 109, pars. 1 et seq), clearly indicates that there exists no implied exception to its requirements of the kind your County Recorder of Deeds suggests. I disagree with the Recorder's interpretation of the court's holding in Gricius v. Lambert, 7 Ill. App. 3d 716. In said case, plaintiff Gricius sold 1.4 acres of a 15 acre tract to defendants and built a roadway perpendicular to the public highway across the 15 acre tract

past and abutting defendants' lot to plaintiffs' residence located on the easterly edge of the 15 acre tract. Plaintiffs never surveyed the roadway or filed a plat in accordance with section 1 of "AN ACT to revise the law in relation to plats" (Ill. Rev. Stat. 1959, ch. 109, par. 1) which contained the identical requirement found in the present version of section 1 as quoted in part above.

In the trial court, plaintiffs sought a money judgment for upkeep of the roadway between the public highway and the defendants' property. Defendants counter-claimed for an order, requiring plaintiffs, inter alia, to comply with the provisions of said Act by dedicating the roadway to the public. The court, inter alia, ordered plaintiffs to make such a dedication and to take steps necessary to comply with said Act.

In the appellate court, the court's opinion did not hold, as your Recorder seems to have construed it, that plaintiffs need not have a plat recorded in compliance with the Act. The trial court decree stated, inter alia, that:

> "Plaintiffs are ordered to make a dedication for a public road * * * and to take steps necessary to comply with the provisions of Chapter 109 of the Illinois Revised Statutes." (emphasis added) (Gricius v. Lambert, 7 Ill. App. 3d 716, 719.)

Since the appellate court affirmed the trial court order in all respects except as to that part which required plaintiffs to dedicate to the public the roadway in question, the portion of the trial court decree ordering compliance with the statute remained intact.

That no judicially implied exception exists is also made clear in the case of Marcos v. Jones, 6 Ill. App. 3d 950, where the issue on appeal was whether defendant's inability or unwillingness to comply with certain subdivision statutes and ordinances constituted a breach of contract which entitled plaintiffs to a return of their earnest money without tendering the balance of the purchase price, and whether the court erred by refusing to admit evidence of defendant's non-compliance with those statutes and ordinances. As in the Gricius, case, this case involved the division of a piece of property into two tracts. Access

to the tract retained by defendant could be had only over the parcel sold to plaintiffs and plaintiffs agreed to construct a roadway on property set aside for such purpose.

The contract between plaintiffs and defendant called for a "recordable" trustee's deed to be delivered to plaintiffs. Plaintiffs contended that defendant's failure to file a subdivision plat in accordance with section 1 of "AN ACT to revise the law in relation to plats" (Ill. Rev. Stat. 1969, ch. 109, par. 1) rendered title unrecordable since section 5a of said Act (Ill. Rev. Stat. 1969, ch. 109, par. 5a) provided:

> "Recorder of Deeds or the Registrar of Title of any County shall not record deeds or leases which attempt to convey property contrary to the provisions of this Act. In case of doubt, the Recorder of Deeds or the Registrar of Title of any County may require the person presenting such deed or lease to give evidence of the legality of a conveyance by an affidavit as to the facts which exempt such conveyance from the provisions of this Act."

The appellate court held that the trial court had erroneously refused to admit the statutes into evidence and

that the deed could not have been recorded because defendant failed to subdivide the property as required by statute. The case was then remanded for a new trial. Nowhere did the court suggest that since no new public access or facility was to be established, there was no need for the filing of a subdivision plat.

In addition to judicial construction, an application of rules of statutory construction indicates that there can be no implied exception to requirements of section 1 of "AN ACT to revise the law in relation to plats". (Ill. Rev. Stat. 1971, ch. 109, par. 1 as amended by P.A. 76-553.) A fundamental principle of statutory construction embodied in the maxim "expressio unius exclusio alterius" is that the enumeration of one or more certain things in a statute excludes all other things not mentioned in the statute. (In re Estate of Leichtenberg, 7 Ill. 2d 545.) So, where a statute enumerates exceptions, the maxim prohibits reading into the statute other exceptions. People ex rel. Cadell v. Board of Fire and Police Commissioners of the City of East St. Louis, 345 Ill. App. 415.

Applying the above rules to section 1 of "AN ACT to revise the law in relation to plats" (Ill. Rev. Stat. 1971, ch. 109, par. 1 as amended by P.A. 78-553), it becomes clear that there can be no implied exception to its requirements. Subparagraph (b) of said section, which contains express exceptions to the Act's coverage, states in part:

> "(b) The provisions of this Act do not apply and no plat is required in any of the following instances:
>
> 1. The division or subdivision of land into parcels or tracts of 5 acres or more in size which does not involve any new streets or easements of access;
>
> 2. The division of lots or blocks of less than 1 acre in any recorded subdivision which does not involve any new streets or easements of access;
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> * * *
>
> 4. The conveyance of parcels of land or interests therein for use as a right of way for railroads or other public utility facilities and other pipe lines which does not involve any new streets or easements of access;
>
> 5. The conveyance of land owned by a railroad or other public utility which does not involve any new streets or easements of

access;

* * *

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.

* * * "

Specifically, it should be noted that the availability of the above exceptions is contingent, in part, upon the subdivision or conveyance in question not involving any new streets or easements of access. A conveyance of a tract of less than 5 acres whose only characteristic is that it does not involve any new streets or easements of access would obviously not qualify under these exceptions. If the legislature had intended such a conveyance to be exempted, it surely would have so provided in language similar to that in the above quoted exceptions.

Furthermore, the fact that the legislature amended section 1 in 1965 by eliminating an exception for:

> "The division or subdivision of land into parcels or tracts of <u>any size</u> which does not involve any new streets or easements of access in counties having a population of 60,000 or less according to the last preceding federal decennial census * * * " (emphasis added),

further indicates that the exception your Recorder seeks to imply would be contrary to legislative intent.

For the foregoing reasons, I am of the opinion that the fact that a deed of conveyance does not, on its face, establish any new public accesses or facilities, does not, in and of itself, entitle it to be recorded without establishing its qualification under an exception to "AN ACT to revise the law in relation to plats". Ill. Rev. Stat. 1971, ch. 109, pars. 1 et seq.

Finally, while not pertinent to your inquiry, you may be interested in noting that Public Act 78-553 did add a new exception to subparagraph (b) of said section which exempts from the Act's coverage:

> "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."

Very truly yours,

ATTORNEY GENERAL