



**THE ATTORNEY GENERAL
OF TEXAS**

July 27, 1990

**JIM MATTOX
ATTORNEY GENERAL**

Honorable Mark W. Stiles:
Chairman
County Affairs
House of Representatives
P. O. Box 2910
Austin, Texas 78768-2910

LO-90-47

Dear Mr. Stiles:

You ask whether the interpretation given in Attorney General Opinion JM-1100 (1989) of the platting requirements of Local Government Code section 232.001(a), for land located outside the limits of municipalities, applies as well to the platting requirements of section 212.004(a) for land located within the limits or extraterritorial jurisdiction of municipalities. Section 232.001(a), which was the subject of Attorney General Opinion JM-1100, provides in relevant part:

The owner of a tract of land located outside the limits of a municipality who divides the tract into two or more parts to lay out a subdivision of the tract, including an addition, or to lay out suburban lots or buildings lots, and to lay out streets, alleys, squares, parks, or other parts of the tract intended to be dedicated to public use or for the use of purchasers or owners of lots fronting on or adjacent to the streets, alleys, squares, parks, or other parts must have a plat of the subdivision prepared. A division of a tract under this subsection includes a division regardless of whether it is made by using a metes and bounds description in a deed of conveyance or in a contract for a deed, by using a contract of sale or other executory contract to convey, or by using any other method. (Emphasis added.)

Attorney General Opinion JM-1100 concluded that the language of section 232.001(a) on its face, and particularly

the "and" underscored in the above quote of the provision, indicates that

[t]he platting requirement under the subsection is not triggered unless there is a division of the tract -- be it for a subdivision, an addition, or suburban or building lots -- and the division also involves the laying out of 'streets, alleys, squares, parks, or other parts' as described in the statute.

Attorney General Opinion JM-1100 at 2 (emphasis in original).

Section 212.004(a) of the Local Government Code, the provision about which you are concerned, provides, in language virtually identical to that of section 232.001(a), with respect to areas within a municipality's limits or extraterritorial jurisdiction:

The owner of a tract of land located within the limits or in the extraterritorial jurisdiction of a municipality who divides the tract in two or more parts to lay out a subdivision of the tract, including an addition to a municipality, or to lay out suburban, building, or other lots, and to lay out streets, alleys, squares, parks, or other parts of the tract intended to be dedicated to public use or for the use of purchasers or owners of lots fronting on or adjacent to the streets, alleys, squares, parks, or other parts must have a plat of the subdivision prepared. (Emphasis added.)

The conjunctive "and," which was the key to our interpretation of section 232.001(a), appears in section 212.004(a) as well, and functions there, we think, as it does in section 232.001(a). In our opinion, the platting requirement of section 212.004(a) is not triggered unless the division of the tract -- whether it is for an addition, subdivision, or suburban, building, or other lots -- also involves the laying out of streets, alleys, squares, parks, or other parts to be dedicated to public use or for the use of purchasers or owners as described in section 212.004(a).

We note that a 1989 amendment to subchapter A of chapter 212, of which section 212.004(a) is a part, might

suggest a different result, at least with respect to the municipal provisions of section 212.004(a). Section 212.006 provides that the municipal planning commission, or lacking such, the governing body, is responsible for approving plats under the subchapter. The new section 212.0065 provides for the delegation of plat approval authority by a municipality to an employee of the municipality in the case of "minor plats involving four or fewer lots fronting on an existing street and not requiring the creation of any new street or the extension of municipal facilities." Local Gov't Code § 212.0065 (as added by Acts 1989, 71st Leg., ch. 345). Arguably, section 212.0065 indicates a legislative understanding that the platting provisions of section 212.004(a) require platting of any division of a tract, even if no "streets, alleys, squares, parks, or other parts" for public use or use by purchasers or owners, as described in the provision, are to be laid out in connection with the division.

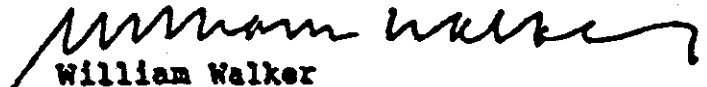
The legislative history of the new section 212.0065 is not helpful in determining the legislature's understanding of the platting requirements under subchapter A of chapter 212. The provision was added as a floor amendment in both the senate and house, without discussion. See H.J. of Tex., 71st Leg., Reg. Sess. 2910 (1989); S.T. of Tex., 71st Leg., Reg. Sess. 3041 (1989). In our opinion, however, the provisions of section 212.0065, on their face, can be read together with those of section 232.001(a), as construed in Attorney General Opinion JM-1100, and with those of section 212.004(a) as we have construed them here. While section 212.0065 appears to contemplate that a plat is required under section 212.004(a), and by extension under the almost identical provisions of section 232.001(a), even where the "creation of a new street" or "extension of municipal facilities" will not be required, the new section does not mention "alleys, squares, parks, or other parts" as described in sections 212.004(a) or 232.001(a). Reading section 212.0065 with sections 212.004(a) and 232.001(a), we are of the opinion that the former section's provisions apply to divisions which must be platted because, though they do not involve the creation of streets, they nevertheless involve the laying out of "alleys, squares, parks, or other parts" as described in section 212.004(a) (and in section 232.001(a) for non-incorporated areas).

Our reading of the relevant provisions here is based on their plain language. We do not think it leads to patently unreasonable results. If practical difficulties are occasioned by the language of these provisions, we think it

is the business of the legislature, and not this office, to remedy them.

Again, we conclude in response to your question that the platting requirements of Local Government Code section 212.004(a), regarding divisions of tracts within a municipality's limits or extraterritorial jurisdiction, are not triggered unless the divisions also involve the laying out of streets, alleys, squares, parks, or other parts to be dedicated to public use or for the use of purchasers or owners as described in the section. We reaffirm the similar conclusion of Attorney General Opinion JM-1100 with respect to divisions of tracts in unincorporated areas under section 232.001(a).

Very truly yours,



William Walker
Assistant Attorney General
Opinion Committee

APPROVED: Rick Gilpin, Chairman
Opinion Committee

Sarah Woelk, Chief
Letter Opinion Section

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Ref.: ID# 9636