

1982 WL 189417 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

September 9, 1982

*1 James A. Bell, Esq.
Post Office Box 905
St. George, SC 29477

Dear Mr. Bell:

You have requested an opinion from this office concerning the legitimacy or legality of subdivision plats which were filed after the effective date of Act No. 463, Acts and Joint Resolutions of South Carolina, 1967, which is titled 'An Act Regulating and Controlling the Division of Land in Dorchester County.' It is the opinion of this Office that any person who conveys real property by making reference to plat for a subdivision which was proposed after the effective date of the Act would do so in violation of this Act and would be liable for those penalties as provided in the Act, and further that Dorchester County may enjoin such transfers or sales.

The Act clearly provides that tracts or parcels of real estate in Dorchester County proposed to be subdivided shall meet the requirements of this Act. § 3, Act No. 463, supra. One of those requirements is that before the subdivision is made, or any lots sold, the subdivision plan must first be approved by the county governing body, and the approval must be noted on the plat being recorded. § 4(B)(II), Act No. 463, supra. The effective date of this Act is June 29, 1967. There is no exemption in the Act for any plats filed after the effective date of the Act without the prior approval of the Dorchester County Subdivision Review Board. It is most likely, however, that the Act was intended to permit subdivision plans proposed before the effective date of the Act to be implemented without further approval, even perhaps if the plat for that subdivision had not yet been filed. See § 3, Act No. 463, supra. Enforcement of the Act in this situation would require making a factual determination as to whether the subdivision had been proposed before the effective date of the Act. Evidence relating to that determination might include: 1) Whether any improvements had been made prior to the effective date (§ 4, B., II, A., 5., supra); or 2) Whether any markers or monuments had been installed prior to the effective date of the Act, supra.

The Act provides clearly that if any person transfers or sells, or agrees to sell, or negotiates to sell subdivision lots by reference to or exhibition of an unapproved plat, he shall be subject to a criminal penalty as provided in the Act. § 5, Act No. 463, supra. This suggests that a developer of a subdivision relying on an unapproved plat would have the burden of showing that the subdivision was proposed before the effective date of the Act. The County is empowered to enjoin such transfers or sales or agreements by legal proceedings if the developer is proceeding with unapproved subdivision plans. Id. However, since the Act does not clearly address the question of what pre-existing subdivision plans would be exempted from the Act, perhaps the County might consider bringing a declaratory judgment action to resolve this question.

Sincerely yours,

*2 David C. Eckstrom
Assistant Attorney General

1982 WL 189417 (S.C.A.G.)