

# OFFICE OF THE ATTORNEY GENERAL



93-00150

JIMMY EVANS  
ATTORNEY GENERAL  
STATE OF ALABAMA

MAR - 2 1993

ALABAMA STATE HOUSE  
11 SOUTH UNION STREET  
MONTGOMERY, ALABAMA 36130  
AREA (205) 242-7300

Honorable Stephen A. McMillan  
House of Representatives  
P. O. Box 337  
Bay Minette, Alabama 36507

Municipalities - Planning  
Commissions - Counties -  
Subdivisions

The provisions of Code of Alabama  
1975, § 11-24-6 do not permit  
counties and municipalities to  
alter the requirements of Code of  
Alabama 1975, § 11-52-30.

Dear Representative McMillan:

This opinion is issued in response to your request for an  
opinion from the Attorney General.

## QUESTION

Your question is presented as follows:

The City of Orange Beach was incorporated  
August 1, 1984. My question is: Can the  
City of Orange Beach exercise its extra-  
territorial subdivision planning jurisdic-  
tion and under what circumstances?

## FACTS AND ANALYSIS

We turn to the first part of your question about Code of  
Alabama 1975, § 11-52-30. You ask whether Section 11-52-30(b)  
applies to all counties. The answer is yes.

The second and third parts of your question are whether the provisions of Code of Alabama 1975, § 11-24-6, supersede the provisions of Section 11-52-30.

Code of Alabama 1975, § 11-52-30(b) states:

"(b) No map or plat of any subdivision shall be recorded, and no property shall be sold referenced to such map or plat, until and unless it has been first submitted to and approved by the county engineer or, in his absence, by the acting county engineer of such county, who shall examine same for compliance with the specifications and regulations of the county commission of such county and, if it is in compliance, shall note his approval on such map or plat by noting thereon 'approved,' giving the date of such approval and signing same in his official capacity.

"Where any subdivision lies within the extraterritorial planning jurisdiction of any municipality having exercised said extraterritorial jurisdiction, the requirement for approval of improvements in said subdivision by the county engineer shall in no way diminish, waive or otherwise lessen the requirements of such municipality. The more strict requirements, whether of the municipality or of the county, must be complied with by the developer. Approval by the county engineer shall in no way constitute approval in lieu of or on behalf of any municipality with respect to subdivisions lying within its extraterritorial planning jurisdiction. All such maps or plats must be first submitted to and approved by the municipal planning commission or other appropriate municipal agency exercising jurisdiction over any subdivision lying within the extra-territorial planning jurisdiction and, following such approval by such municipal planning commission, must then be approved by the county engineer or, in his absence, by the acting county engineer."

Code of Alabama 1975, § 11-24-6 states:

"It is the intent of the legislature that all proposed subdivisions be subject to regulation, and counties and municipalities affected by provisions of this chapter shall have authority to reach and publish agreement as to exercise of jurisdictional authority over proposed subdivisions, which agreement shall be published once a week for two consecutive weeks in a newspaper of general circulation in the county and affected municipality and such agreement shall thereafter have the force and effect of law."

We assume here that no issue is raised under Code of Alabama 1975, § 11-24-5.

It appears that Section 11-24-6 simply authorizes the county and the affected municipality to decide what portion of the land lying outside the police jurisdiction, but within the five-mile limit (Section 11-52-30), will be under the jurisdiction of the municipal planning commission and what portion will be under the jurisdiction of the county. We do not think that Section 11-24-6 lessens or negates any of the requirements of Section 11-52-30.

The fourth part of your question is:

What other functions of government may be exercised by municipalities within the five-mile extraterritorial area other than subdivision regulations? For example, an exercise of building inspection collection of building permit fees, etc?

Baldwin County is unique in that the county has special powers of zoning and regulation not generally authorized for other counties in the state. Perhaps we can best answer the fourth part of your question by summarizing the holding of the Alabama Court of Civil Appeals as found in the annotations following Code of Alabama 1975, § 11-52-31 (Pocket Part) as follows:

"Section 11-52-30(b) grants the county the authority to approve plats within the extraterritorial jurisdiction of a municipal

planning commission; but after the plat has been approved, the municipal planning commission has exclusive jurisdiction over development of the subdivision, pursuant to § 11-52-36 and a regulation requiring issuance of building permits falls within the authority of the municipal planning commission to adopt regulations governing the subdivision of land within its jurisdiction. City of Robertsdale v. Baldwin County, 538 So.2d 33 (Ala.Civ.App. 1988)."

CONCLUSION

The provisions of Code of Alabama 1975, § 11-24-6, do not permit counties and municipalities to alter the requirements of Code of Alabama 1975, § 11-52-30.

I hope this sufficiently answers your question. If our office can be of further assistance, please do not hesitate to contact us.

Sincerely,

JIMMY EVANS  
Attorney General  
By:

  
JAMES R. SOLOMON, JR.  
Chief, Opinions Division

JE/CJS/dn  
1089N.RFT