

MEMORANDUM OF LEGAL OPINION

To: PBCJPC Members
From: Brian Privett, Commission Legal Counsel
RE: Agricultural Land Divisions

Issue: Whether the restriction on three agricultural land divisions in a five year period violates the Kentucky Revised Statutes.

Opinion: No. There is nothing in the Kentucky Revised Statutes which disallows restrictions on agricultural land division, but the belief there is most likely comes from the exemption of agricultural land from the term “subdivisions”.

Under the Subdivision Regulations adopted by the PBCJPC, Agricultural Land divisions are restricted to one (1) division per year, and no more than three (3) divisions in five (5) years:

345(B)(3): Any tracts of land divided and transferred pursuant to this section, including the parent tract, shall not be divided as an Agricultural Land Division again in less than one year intervals and shall not be divided into more than three tracts from the original tracts in five years, more than three tracts from the original tract means in addition to the original and permits as the product of three divisions a total of four tracts in five years.

There is no statute in KRS Chapter 100, Planning & Zoning, or in any other part of the KRS that disallows this restriction. The only section that mistakenly implies such a restriction would be KRS 110.111(22), Definitions (which is identical to Section 1.8 of the Bourbon County Planning Ordinances):

"Subdivision" means the division of a parcel of land into (3) or more lots or parcels except in a county containing a city with a population equal to or greater than eight thousand (8,000) based upon the most recent federal decennial census or in an urban-county government or consolidated local government where a subdivision means the division of a parcel of land into two (2) or more lots or parcels; for the purpose, whether immediate or future, of sale, lease, or building development, or if a new street is involved, any division of a parcel of land; **provided that a division of land for agricultural use and not involving a new street shall not be deemed a subdivision.** The term includes resubdivision and when appropriate to the context, shall relate to the process of subdivision or to the land subdivided; any division or redivision of land into parcels of less than one (1) acre occurring within twelve (12) months following a division of the same land shall be deemed a subdivision within the meaning of this section.

This statute merely exempts agricultural land divisions from the specific requirements of subdivision regulations, namely, pre-application, conditional approval of preliminary plats, and approval of final plats. By excluding agricultural land divisions from the definition of subdivisions, it streamlines the process for agricultural land owners, and facilitates the division of land, it does exclude any restrictions, however. The Commission is free to continue to make reasonable restrictions on agricultural land within the Kentucky Revised Statutes and community standards.