May 14, 2007

The Honorable Stephen K. Haller
Greene County Prosecuting Attorney
61 Greene Street, Second Floor
Xenia, Ohio 45385

SYLLABUS: 2007-008

1. Except as provided in R.C. 931.07(C)(1)(b), a board of county commissioners may not approve an application to enroll additional land in an existing agricultural security area.

2. Under R.C. 931.07(C)(1)(b), enrollment of additional land in an existing agricultural security area is done in accordance with R.C. 931.02 and R.C. 931.03.

3. Enrollment of additional land in an existing agricultural security area under R.C. 931.07(C)(1)(b) does not extend or reduce the agricultural security area's ten-year enrollment period.

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May 14, 2007

OPINION NO. 2007-008

The Honorable Stephen K. Haller
Greene County Prosecuting Attorney
61 Greene Street, Second Floor
Xenia, Ohio 45385

Dear Prosecutor Haller:

You have requested an opinion concerning the addition of land to an existing agricultural security area. Specifically, you wish to know:

1. May a board of county commissioners approve an application to add less than five hundred acres of land to an existing agricultural security area?

2. If a board of county commissioners may enroll additional land in an existing agricultural security area, what is the procedure for adding the land?

3. Does the enrollment of additional land in an existing agricultural security area affect the agricultural security area's ten-year enrollment period?

On the basis of the analysis set forth in this opinion, we conclude that, except as provided in R.C. 931.07(C)(1)(b), a board of county commissioners may not approve an application to enroll additional land in an existing agricultural security area. We conclude, further, that, under R.C. 931.07(C)(1)(b), enrollment of additional land in an existing agricultural security area is done in accordance with R.C. 931.02 and R.C. 931.03. Finally, we conclude that enrollment of additional land in an existing agricultural security area under R.C. 931.07(C)(1)(b) does not extend or reduce the agricultural security area's ten-year enrollment period.

Establishment of Agricultural Security Areas

R.C. Chapter 931 authorizes counties and townships to establish agricultural security areas for the preservation of land for agricultural purposes upon the application of land owners.[1] Under R.C. 931.02(A), land that is located in the unincorporated area of a township or county may be enrolled in an agricultural security area through the submission of an application by a land owner (or land owners, if the land sought to be enrolled consists of parcels owned by different persons) to the board of township trustees of each township and to the board of county commissioners of each county in which the land is located requesting the establishment of such an area.[2]

The application for the establishment of an agricultural security area shall be on a form that the Director of Agriculture prescribes and provides to county auditors. R.C. 931.02(A). The application must be signed by each applicant who is submitting the application[3] and contain the

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[1] An agricultural security area may be established when all of the following criteria are satisfied:

> (1) The area consists of not less than five hundred acres of contiguous farmland that is located in the unincorporated area of a township or county….
> (2) The land forming the area is an agricultural district or districts established under [R.C. Chapter 929].
> (3) The land forming the area is valued and assessed for real property tax purposes in accordance with its current agricultural use value under [R.C. 5713.30-.38]….
> (4) Each application submitted by the owner or owners of the land forming the area is approved under [R.C. 931.03] by the boards of township trustees of all of the townships in which the land is located.
> (5) Each application submitted by the owner or owners of the land forming the area is approved under [R.C. 931.03] by the boards of county commissioners of all of the counties in which the land is located.

R.C. 931.02(B).

[2] R.C. 931.02(A) provides that, "[l]and that is located in a municipal corporation and land that is located in territory that is proposed to be annexed to a municipal corporation by a pending proceeding before the board of county commissioners or in any court of competent jurisdiction shall not be included in an agricultural security area."

[3] If all of the land sought to be enrolled in an agricultural security area is owned by one person, that person shall submit the application to the required boards. R.C. 931.02(A). If the land sought to be enrolled in an agricultural security area consists of parcels owned by different persons who have aggregated their parcels, either each owner may submit a separate application

name of each applicant, information concerning the property interest of each applicant in the land to be enrolled, a statement that the applicants will not initiate, approve, or finance any new development[4] on the land for nonagricultural purposes, a listing of specified administrative and legal proceedings involving the applicants, a statement that the applicants are complying with best management practices,[5] certain maps, and a list of the boards to whom the application has been submitted. *Id.*

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to the required boards or all of the owners collectively may submit one application to the required boards. *Id.*

[4] For purposes of the application to establish an agricultural security area, R.C. 931.02(A)(3) requires each applicant to state that the "applicant will not initiate, approve, or finance any new development for nonagricultural purposes on the land that is proposed to be enrolled in an agricultural security area during the ten-year period of the enrollment, except as is otherwise authorized under [R.C. 931.04(A)]." R.C. 931.02(A)(3) further provides:

> For purposes of … this [division], "new development" includes, without limitation, an applicant's transfer to another person of the ownership of a property interest in the land that occurs during the period beginning on the date that the application is submitted and ending on the date that the ten-year period of enrollment is scheduled to expire. "New development" does not include taking any actions that are authorized under property rights in the land, such as mineral rights or easements, that were transferred to a person other than an applicant prior to the date that the application is submitted. In addition, "new development" does not include the construction, modification, or operation of transmission lines for electricity, gas, or oil or of any gathering or production lines for oil or gas, provided that the construction, modification, or operation of the lines does not cause the land to become ineligible for valuation and assessment for real property tax purposes in accordance with its current agricultural use value under [R.C. 5713.30-.38].

[5] "Best management practices," as used in R.C. 931.02, means

> the engagement of agricultural production and management, including practices such as manure handling, tillage, forestry management, and similar practices, in a manner that is generally accepted in the agricultural industry and that is approved by any of the following:
>
> (1) The United States department of agriculture;
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> (2) The natural resources conservation service in the United States department of agriculture;
>
> (3) The department of natural resources;

Each board of township trustees and board of county commissioners to which an application to establish an agricultural security area is submitted shall hold a public hearing on the application.[6] R.C. 931.03(A)(1). Each such board shall review and consider the application, any information concerning improvements to existing or proposed roads that are located or are to be located within the agricultural security area, any comprehensive plan that is in place for the township or county, and any comments submitted. R.C. 931.03(A)(1); R.C. 931.03(A)(4). After the hearing, a board of township trustees or a board of county commissioners may approve or reject the establishment of an agricultural security area, as follows:

> Not later than forty-five days after a board of township trustees hears the application and not later than sixty days after a board of county commissioners hears the application, each respective board shall adopt a resolution either approving or rejecting the application. However, if a board determines that the information in the application is incorrect or the application is incomplete, the board shall return the application to the applicant, by certified mail, with an enumeration of the items that are incorrect or incomplete.
>
> Upon receipt of the returned application, the applicant may amend the application. Not later than fifteen days after receipt of the returned application, the applicant may submit an amended application to each board of township trustees and each board of county commissioners to whom the original application was submitted.
>
> Not later than thirty days after receipt of an amended application, a board shall adopt a resolution either approving or rejecting the amended application. Not later than five days after adoption of the resolution, the board shall notify the applicant, by certified mail, of the board's decision to approve or reject the application.[7] (Footnote added.)

> (4) A soil and water conservation district established under [R.C. Chapter 1515];
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> (5) With respect to organic or sustainable production methods, a conservation professional whom the director of agriculture approves as having expertise in those methods.

R.C. 931.01(B).

[6] The board of township trustees of each township and the board of county commissioners of each county that is required to hear an application to establish an agricultural security area may conduct a joint meeting in lieu of meeting separately. R.C. 931.03(A)(2).

[7] The approval or disapproval of an application to establish an agricultural security area under R.C. 931.03 is not a final order, adjudication, or decision under R.C. 2506.01 and is not appealable under R.C. Chapter 2506. R.C. 931.03(E).

R.C. 931.03(A)(3).

Upon the adoption of a resolution by each of the affected boards of township trustees and boards of county commissioners approving the same version of the application or applications requesting the establishment of an agricultural security area,[8] "[a]n agricultural security area is established, and the land that is proposed for inclusion in the area is enrolled in the area."[9] R.C. 931.03(B)(1). Once established, an agricultural security area may continue in existence for ten years unless either of the following occurs:

> (1) The sole owner of land enrolled in the area withdraws under [R.C. 931.07].
>
> (2) Unless [R.C. 931.07(C)] applies, land in the area fails to satisfy any of the criteria specified in [R.C. 931.02(B)(1)-(3)].

R.C. 931.03(D).

During the ten-year enrollment period, boards of township trustees and boards of county commissioners may not initiate, approve, or finance any development for residential, commercial, or industrial purposes, including construction of new roads and water and sewer

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[8] R.C. 931.03(C) requires a township or county resolution approving the establishment of an agricultural security area to include all of the following:

> (1) A statement that the board of township trustees or board of county commissioners, as applicable, commits not to initiate, approve, or finance any development for residential, commercial, or industrial purposes, including construction of new roads and water and sewer lines, within the area for a period of ten years….
>
> ….
>
> (2) A requirement that the owner or owners of the land in the area use best management practices;
>
> (3) A statement that describes the agreement that was reached with other boards, if applicable, under [R.C. 5709.28] concerning the percentage of the taxable value of qualifying agricultural real property in the agricultural security area that is to be exempted from taxation under that section and the number of years that the tax exemption established under that section will apply to that property.

[9] When a board of township trustees or board of county commissioners adopts a resolution approving the establishment of an agricultural security area, the board must send a copy of the resolution to the Director of Agriculture, the Director of Transportation, the superintendent of each school district within the area, the county engineer, and the county auditor. R.C. 931.03(B)(2).

lines, within the agricultural security area. *See* R.C. 931.03(C)(1); R.C. 931.07(D). Also, except as provided in R.C. 931.04(A), no owner of land that is enrolled in the agricultural security area may initiate, approve, or finance any new development on the land for nonagricultural purposes. R.C. 931.08;[10] *see* R.C. 931.02(A)(3); R.C. 931.07(D).

Authority of a Board of County Commissioners to Add Land to an Existing Agricultural Security Area

Let us now consider your first question, which asks whether a board of county commissioners may approve an application to add less than five hundred acres of land to an existing agricultural security area.[11] It is a well-settled principle that a board of county commissioners, as a creature of statute, has only those powers expressly provided by statute or as may exist by necessary implication. *State ex rel. Shriver v. Bd. of Comm'rs of Belmont County*, 148 Ohio St. 277, 74 N.E.2d 248 (1947); *see State ex rel. A. Bentley & Sons Co. v. Pierce*, 96 Ohio St. 44, 47, 117 N.E. 6 (1917) (concerning legislative grants of power to political subdivisions and their officers, boards, and commissions, a "grant of power, by virtue of a statute, may be either express or implied, but the limitation put upon the implied power is that it is only such as may be reasonably necessary to make the express power effective"). In accordance with this principle, a board of county commissioners may not approve an application to add less than five hundred acres of land to an existing agricultural security area unless the board has been granted this power by statute, either expressly or by necessary implication.[12]

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[10] An owner of land that is enrolled in an agricultural area security who violates R.C. 931.08 "shall be fined five hundred dollars." R.C. 931.99.

[11] Your first question arises because an area of land that is less than five hundred acres may not be established as an agricultural security area under R.C. Chapter 931. R.C. 931.02(B)(1); *see also* R.C. 931.07(C)(1)(a) (when a portion of the land that is enrolled in an agricultural security area ceases to be enrolled, the remaining land in the agricultural security area may continue to be "enrolled in the agricultural security area until the enrollment expires under any of the following circumstances: … [w]ithin the first five years of a ten-year enrollment period, enrollment may continue if the number of acres remaining in the agricultural security area equals five hundred or more"); R.C. 931.07(C)(1)(b) (when a portion of the land that is enrolled in an agricultural security area ceases to be enrolled, the remaining land in the agricultural security area may continue to be "enrolled in the agricultural security area until the enrollment expires under any of the following circumstances: … [w]ithin the first five years of a ten-year enrollment period, if the number of acres remaining in the area has diminished to fewer than five hundred, enrollment may continue only if additional contiguous farmland is enrolled in the area to the extent that the number of acres in the area increases once more to equal five hundred or more").

[12] This opinion does not consider the authority of a board of county commissioners to approve an application to add less than five hundred acres of land to an existing agricultural

As explained previously, R.C. Chapter 931 authorizes a board of county commissioners to approve the establishment of agricultural security areas. Under this chapter, when the amount of land that is enrolled in an existing agricultural security area is reduced to fewer than five hundred acres, a board of county commissioners may approve an application to add land to the agricultural security area:

> If an owner of land that is enrolled in an agricultural security area withdraws from the area under this section or if at any time an owner's land fails to satisfy either of the criteria established under division (B)(2) or (3) of [R.C. 931.02], any other owners of land that is enrolled in the area who do not withdraw and whose land satisfies those criteria may continue to have their land enrolled in the agricultural security area until the enrollment expires under any of the following circumstances:
>
> ….
>
> (b) Within the first five years of a ten-year enrollment period, if the number of acres remaining in the area has diminished to fewer than five hundred, enrollment may continue only *if additional contiguous farmland is enrolled in the area to the extent that the number of acres in the area increases once more to equal five hundred or more*. Such an increase in acreage may occur through the addition of contiguous farmland to the area either by a landowner who already has land enrolled in the area or by another landowner. In either case, in order to enroll the land in the area, the landowner shall submit, not later than sixty days following the date on which the acreage in the area diminished to fewer than five hundred, an application in accordance with [R.C. 931.02]. *The landowner shall obtain the approval of the application from all appropriate boards of township trustees and boards of county commissioners in accordance with [R.C. 931.03]*. Enrollment of the additional land in the agricultural security area shall continue until the expiration of the existing, partially elapsed, ten-year enrollment period and may be renewed in accordance with [R.C. 931.06]. (Emphasis added.)

R.C. 931.07(C)(1).

The General Assembly has explicitly provided in R.C. 931.07(C)(1)(b) the limited circumstances under which additional land may be enrolled in an existing agricultural security area by a board of county commissioners. Except as provided in R.C. 931.07(C)(1)(b), a board of county commissioners has no other express authority to approve an application to add land to an existing agricultural security area.

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security area when the county has acquired home rule powers pursuant to Ohio Const. art. X, § 1 or has adopted a charter pursuant to Ohio Const. art. X, §§ 3 and 4. *See Geauga County Bd. of Comm'rs v. Munn Rd. Sand & Gravel*, 67 Ohio St. 3d 579, 583, 621 N.E.2d 696 (1993); 2006 Op. Att'y Gen. No. 2006-052 at 2-520 n.2.

The presence of express authority to approve an application to enroll additional land in an existing agricultural security area in certain situations indicates that in the absence of specific authority in other instances there is no implied authority to approve an application to add land to an existing agricultural security area. *State v. Droste*, 83 Ohio St. 3d 36, 39, 697 N.E.2d 620 (1998) (under the general rule of statutory construction *expressio unius est exclusio alterius*, the expression of one or more things implies the exclusion of those not identified); *Thomas v. Freeman*, 79 Ohio St. 3d 221, 224-25, 680 N.E.2d 997 (1997) (the rule of *expressio unius est exclusio alterius*, or the naming of a specific thing, implies the exclusion of those not named). If a board of county commissioners could exercise by necessary implication the power to approve an application to add land to an existing agricultural security area for any reason or at any time, the language of R.C. 931.07(C)(1)(b) would be unnecessary or useless. Because "the General Assembly is not presumed to do a vain or useless thing," *State ex rel. Cleveland Elec. Illum. Co. v. City of Euclid*, 169 Ohio St. 476, 479, 159 N.E.2d 756 (1959), it follows that a board of county commissioners does not have the implied authority to approve an application to add land to an existing agricultural security area when none of the circumstances set forth in R.C. 931.07(C)(1)(b) exist. *See generally State ex rel. Foster v. Evatt*, 144 Ohio St. 65, 56 N.E.2d 265 (1944) (syllabus, paragraph eight) ("[t]here is no authority under any rule of statutory construction to add to, enlarge, supply, expand, extend or improve the provisions of the statute to meet a situation not provided for").

Moreover, the enactment of R.C. 931.07(C)(1)(b) demonstrates that, when the General Assembly believes that it is desirable to enroll additional land in an existing agricultural security area, it provides explicit statutory authority to do so. *See generally Lake Shore Elec. Ry. Co. v. P.U.C.O.*, 115 Ohio St. 311, 319, 154 N.E. 239 (1926) (had the legislature intended a particular meaning, "it would not have been difficult to find language which would express that purpose," having used that language in other connections); *State ex rel. Enos v. Stone*, 92 Ohio St. 63, 67, 110 N.E. 627 (1915) (had the General Assembly intended a particular result, it could have employed language used elsewhere that plainly and clearly compelled that result). Accordingly, except as provided in R.C. 931.07(C)(1)(b), a board of county commissioners may not approve an application to enroll additional land in an existing agricultural security area.

Procedures for Adding Land to an Existing Agricultural Security Area Under R.C. 937.01(C)(1)(b)

Your second question concerns the procedures by which a board of county commissioners may enroll additional land in an existing agricultural security area. As explained above, R.C. 931.07(C)(1)(b), which authorizes enrolling additional land in an existing agricultural security area when the amount of land that is enrolled in the agricultural security area is reduced to fewer than five hundred acres, is the only authority by which a board of county commissioners may enroll additional land in an existing agricultural security area.

Under R.C. 931.07(C)(1)(b), the procedures for adding land to an existing agricultural security area are the same ones as are used for establishing an agricultural security area. R.C. 931.07(C)(1)(b) provides, in part, that, in order to enroll additional land in an existing

agricultural security area, a landowner must "submit, not later than sixty days following the date on which the acreage in the area diminished to fewer than five hundred, an application in accordance with [R.C. 931.02]." R.C. 931.07(C)(1)(b) provides, further, that, "[t]he landowner shall obtain approval of the application from all appropriate boards of township trustees and boards of county commissioners in accordance with [R.C. 931.03]." Thus, under R.C. 931.07(C)(1)(b), enrollment of additional land in an existing agricultural security area is done in accordance with R.C. 931.02 and R.C. 931.03. *See generally Sears v. Weimer*, 143 Ohio St. 312, 55 N.E.2d 413 (1944) (syllabus, paragraph five) ("[w]here the language of a statute is plain and unambiguous and conveys a clear and definite meaning there is no occasion for resorting to rules of statutory interpretation. An unambiguous statute is to be applied, not interpreted"). *See generally also* R.C. 931.06 ("[t]he procedures established under [R.C. Chapter 931] for the initial enrollment of land in an agricultural security area apply to the renewal of enrollment").

Affect of Adding Land to an Existing Agricultural Security Area Under R.C. 937.01(C)(1)(b)

Your final question asks whether the enrollment of additional land in an existing agricultural security area affects the agricultural security area's ten-year enrollment period.[13] As discussed previously, land may be added to an existing agricultural security area in accordance with R.C. 931.07(C)(1)(b) when the amount of land that is enrolled in the agricultural security area is reduced to fewer than five hundred acres.

Nothing in R.C. 931.07 or elsewhere in the Revised Code expressly extends or reduces an existing agricultural security area's ten-year enrollment period when additional land is enrolled in the agricultural security area. We note, however, that, under R.C. 931.07(C)(1)(b), "[e]nrollment of the additional land in the agricultural security area *shall continue until the expiration of the existing, partially elapsed, ten-year enrollment period* and may be renewed in accordance with [R.C. 931.06]." (Emphasis added.) Because land enrolled subsequent to the establishment of an agricultural security area becomes part of the agricultural security area, *see* R.C. 931.07(C)(1)(b), the foregoing quoted language of R.C. 931.07(C)(1)(b) indicates that the General Assembly intended for all of the land enrolled in an agricultural security area that adds additional land under R.C. 931.07(C)(1)(b) to be enrolled in the agricultural security area until the end of the agricultural security area's ten-year enrollment period. *See generally Henry v. Cent. Nat'l Bank*, 16 Ohio St. 2d 16, 242 N.E.2d 342 (1968) (syllabus, paragraph two) ("[t]he primary purpose of the judiciary in the interpretation or construction of statutes is to give effect to the intention of the General Assembly, as gathered from the provisions enacted, by the application of well-settled rules of interpretation, the ultimate function being to ascertain the legislative will"). Therefore, enrollment of additional land in an existing agricultural security

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[13] R.C. 931.03(D) states that, except as provided therein, an agricultural security area may continue in existence for ten years.

area under R.C. 931.07(C)(1)(b) does not extend or reduce the agricultural security area's ten-year enrollment period.

Conclusions

In summary, it is my opinion, and you are hereby advised as follows:

1. Except as provided in R.C. 931.07(C)(1)(b), a board of county commissioners may not approve an application to enroll additional land in an existing agricultural security area.

2. Under R.C. 931.07(C)(1)(b), enrollment of additional land in an existing agricultural security area is done in accordance with R.C. 931.02 and R.C. 931.03.

3. Enrollment of additional land in an existing agricultural security area under R.C. 931.07(C)(1)(b) does not extend or reduce the agricultural security area's ten-year enrollment period.

Respectfully,

MARC DANN
Attorney General