December 14, 1993

OPINION NO. 93-053

The Honorable David L. Landefeld
Fairfield County Prosecuting Attorney
323 East Main Street
Lancaster, Ohio 43130

Dear Prosecutor Landefeld:

You have requested an opinion whether the bottling of water from a natural spring constitutes an agricultural use under R.C. 519.01. You have explained that a property owner in a township in your county wishes to bottle for sale the water of a natural spring on his property.

A Township Is Permitted to Engage in Limited Zoning Regulation of Land Used for Agricultural Purposes

R.C. 519.02 authorizes township zoning by providing that "the board of township trustees may in accordance with a comprehensive plan regulate by resolution ... the uses of land for trade, industry, residence, recreation or other purposes in the unincorporated territory of such township." Pursuant to R.C. 519.21(A), a township's zoning authority is limited as follows:

> Except as otherwise provided in division (B) of this section,[1] sections 519.02 to 519.25 of the Revised Code confer no power on any township zoning commission, board of township trustees, or board of zoning appeals to prohibit the use of any land for agricultural purposes or the construction or use of buildings or structures incident to the use for agricultural purposes of the land on which such buildings or structures are located, including buildings or structures that are used primarily for vinting and selling wine and that are located on land any part of which is used for viticulture, and no zoning certificate shall be required for any such building or structure. (Footnote added.)

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[1] R.C. 519.21(B) permits a township to engage in limited zoning regulation of buildings or structures incident to the use of land for agricultural purposes on lots of one to five acres in certain platted or approved subdivisions.

R.C. 519.01's Definition of "Agriculture" Does Not Include the Bottling of Natural Spring Water

For purposes of R.C. 519.02-.25, "agriculture" means "agriculture, farming, dairying, pasturage, apiculture, horticulture, floriculture, viticulture, and animal and poultry husbandry." R.C. 519.01.[2] In order to constitute "agriculture," therefore, the bottling of spring water must come within the meaning of at least one of these terms.

"Agriculture" is defined as "[t]he science, art, and business of cultivating the soil, producing crops, and raising livestock; farming." *The American Heritage Dictionary* 88 (2d college ed. 1985). "Farming" is the gerund (noun) form of the verb "farm," which is "[t]o cultivate or produce a crop on." *Id.* at 490. "Dairying" is "[t]he business of a dairy," *id.* at 363, while "pasturage" denotes "[t]he business of grazing cattle," *id.* at 909. "Apiculture" refers to the raising of bees. *Id.* at 118. "Horticulture" is "[t]he science or art of cultivating fruits, vegetables, flowers, and plants, *id.* at 623, and "floriculture" is, more specifically, "[t]he cultivation of flowering plants," *id.* at 515. "Viticulture" means "[t]he cultivation of grapes." *Id.* at 1352. "Husbandry" is defined as "[t]he cultivation of crops and the breeding and raising of livestock; agriculture....The application of scientific principles, esp. to animal breeding." *Id.* at 628-29. Therefore, "animal and poultry husbandry" refers to the breeding and raising of poultry and other animals.

Clearly, the activity of bottling natural spring water for sale cannot be described by use of the general term "agriculture" or any of the other terms used to further define "agriculture" that appear in R.C. 519.01. Accordingly, the bottling of natural spring water does not constitute "agriculture" for purposes of R.C. 519.02-.25.

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[2] Your request letter notes that the bottling of spring water is regulated by the Department of Agriculture. *See* R.C. 913.22-.28. However, the General Assembly has expressly stated that "agriculture," for purposes of R.C. 519.02-.25, is defined by R.C. 519.01. That the Department of Agriculture regulates the bottling of spring water is not indicative of whether it constitutes agriculture for purposes of R.C. 519.02-.25. The Department of Agriculture regulates a variety of activities, including some that clearly do not constitute agriculture. *See, e.g.*, R.C. 1711.11 (licensing of fair concessions).

Conclusion

It is, therefore, my opinion, and you are hereby advised, that the bottling of natural spring water does not constitute "agriculture" as that term is used in R.C. 519.01, and as a result, the land upon which it occurs is not exempt from township zoning pursuant to R.C. 519.21.

Respectfully,

LEE FISHER
Attorney General

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Fairfield County Prosecuting Attorney
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SYLLABUS: 93-053

The bottling of natural spring water does not constitute "agriculture" as that term is used in R.C. 519.01, and as a result, the land upon which it occurs is not exempt from township zoning pursuant to R.C. 519.21.