July 15, 2003

The Honorable Michael K. Allen
Hamilton County Prosecuting Attorney
230 East Ninth Street, Suite 4000
Cincinnati, Ohio 45202-2151

SYLLABUS: 2003-022

1. Both a county and township may prepare and adopt land use plans for the unincorporated territory of a township.

2. An amendment to a township zoning resolution that is adopted in accordance with the provisions of R.C. Chapter 519 is valid, even though a regional planning commission does not prepare land use plans before the township proceeds to amend its zoning resolution or the amendment is inconsistent with land use plans previously prepared by the regional planning commission.

3. Whether any legal action should be taken by county officials against a township when the township transfers planning authority from a regional planning commission to the township's zoning commission is a decision that cannot be made by means of an Attorney General opinion. Rather, any decision in this regard must be made by county officials following consultation with the prosecuting attorney.

STATE OF OHIO
OFFICE OF THE ATTORNEY GENERAL
JIM PETRO, ATTORNEY GENERAL

Opinions Section
30 E. Broad St., 15th Floor
Columbus, OH 43215-3428
Telephone: (614) 752-6417
Facsimile: (614) 466-0013
www.ag.state.oh.us

July 15, 2003

OPINION NO. 2003-022

The Honorable Michael K. Allen
Hamilton County Prosecuting Attorney
230 East Ninth Street, Suite 4000
Cincinnati, Ohio 45202-2151

Dear Prosecutor Allen:

You have requested an opinion concerning the authority of a county to prepare and adopt plans pertaining to land use in the unincorporated territory of a township when the township's board of trustees authorizes the township's zoning commission to prepare such plans. Information you have provided us indicates that, pursuant to section 3.23 of the Colerain Township zoning resolution, the board of township trustees may authorize an organization to make plans for land use in the unincorporated territory of the township.[1] Sometime ago, the township trustees delegated the duty to make these plans to the Hamilton County Regional Planning Commission (HCRPC).[2] On January 21, 2003, the township trustees adopted a

---

[1] R.C. Chapter 519, which authorizes a township to adopt a system of zoning for all or any part of the unincorporated territory of the township, contains a variety of provisions concerning types of zoning regulations a township is permitted to adopt. *See, e.g.*, R.C. 519.02 (a township may regulate by resolution the location, height, size, and use of buildings and other structures, percentages of lot areas that may be occupied, sizes of open spaces, density of population, and uses of land for various purposes); R.C. 519.021 (a township may regulate planned-unit developments). Before a township may exercise the zoning powers set forth in R.C. Chapter 519, voters must approve a township zoning resolution permitting the township to exercise those powers. R.C. 519.11. Detailed procedures for the adoption of a township zoning resolution and its subsequent amendment are set forth in R.C. 519.03-.121.

[2] A regional planning commission is authorized to contract with and provide planning assistance to townships, R.C. 713.23(B)(4); *see also* R.C. 519.05, and review, evaluate, and make comments and recommendations on proposed and amended comprehensive land use plans, R.C. 713.23(B)(5); *see also* R.C. 519.07; R.C. 519.12(E).

resolution transferring this duty from the HCRPC to the township's zoning commission.[3] In light of this transfer of responsibility, you wish to know the following:

1. What effect does this action by the Colerain Township Trustees have on the authority or duties of the Hamilton County Regional Planning Commission and the Board of County Commissioners? In other words, does the ORC grant authority to prepare and adopt plans for the unincorporated territory to the county, to the townships or to both entities?[4]

---

[3] The resolution, which is numbered 7-03, reads, in part, as follows:

Whereas, the Board of Township Trustees has recognized the benefits to the township of implementing the local zoning resolution, and now also recognizes the benefits of developing and amending a land use plan for Colerain Township developed and refined by competent and knowledgeable members of the community, and Chapter 519 of the Ohio Revised Code authorizes township zoning commissions to make recommendations to their boards of township trustees concerning township zoning:

Whereas, Section 3.23 of the Colerain Township Zoning Resolution authorizes the Board of Trustees to authorize an organization to perform required planning and coordinate planning activities:

Whereas, although the Board of Trustees had previously authorized the Hamilton County Regional Planning Commission to serve as the Colerain Township Planning Authority, it has become clear to the Board of Trustees that, after study, the Colerain Township Zoning Commission would be in a better position to make recommendations to the Board of Trustees as to the uses for the land located within Colerain Township itself….

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF COLERAIN TOWNSHIP, OF HAMILTON COUNTY, OHIO, AS FOLLOWS:

Section 1. Pursuant to Section 3.23 of the Colerain Township Zoning Resolution, the Board of Trustees hereby authorizes the Colerain Township Zoning Commission to study, conduct public hearings, and make recommendations to the Board of Trustees concerning the development of land use plans, and the issues referred to in Chapter 519 of the Ohio Revised Code….

[4] The syllabus of 1961 Op. Att'y Gen. No. 2383, p. 366 advised that, "[a] regional planning commission established pursuant to [R.C. 713.21] is not a 'county board' within the

2. What effect will this action by the Colerain Township Trustees have on judicial review of litigated zoning amendment (e.g. zoning amendment may be consistent with a plan adopted by the township, but inconsistent with a plan adopted by the HCRPC)?

3. Should any legal action by Hamilton County be taken in response to the Township Trustees' action[?] (Footnote added.)

In order to answer your first question we must initially consider the authority of a county and township to prepare and adopt plans for land use in the unincorporated territory of a township. Pursuant to R.C. 713.21 and R.C. 713.22, a county is authorized to either cooperate in the creation of a regional planning commission[5] or create a county planning commission.[6] The primary function of a county or regional planning commission is to formulate plans, recommendations, and reports with respect to the physical, environmental, social, economic, and governmental characteristics, functions, services, and related aspects of the county or region it is formed to serve. R.C. 713.23(A). A regional or county planning commission may, on behalf of the region or county it serves, make plans, including studies, maps, recommendations, and reports on:

(a) Regional goals, objectives, opportunities, and needs, and standards, priorities, and policies to realize such goals and objectives;

(b) Economic and social conditions;

---

meaning of [R.C. 309.09], and such commission, therefore, is not eligible to receive the services of the prosecuting attorney as its legal advisor." *Accord* 1994 Op. Att'y Gen. No. 94-068 at 2-333 n.1. We are, therefore, unable to render an opinion to you concerning the duties of a regional planning commission. *See* 1994 Op. Att'y Gen. No. 94-068 at 2-333 n.1. However, we can advise you as to the authority of a county and township, respectively, to prepare and adopt plans for land use in the unincorporated territory of a township.

[5] R.C. 713.21 states, in part, that the planning commission of any municipal corporation or group of municipal corporations, any board of township trustees, and the board of county commissioners of any county in which such municipal corporation or group of municipal corporations is located or of any adjoining county may cooperate in the creation of a regional planning commission, which is to encompass any region as agreed upon by such planning commissions and boards, exclusive, however, of any territory within the limits of a municipal corporation that does not have a planning commission. *See generally* R.C. 713.01-.15 (providing for the establishment and operation of city and village planning commissions).

[6] R.C. 713.22 provides, in part, that a board of county commissioners "may, and on petition of the planning commissions of a majority of the municipal corporations in the county having those planning commissions shall, provide for the organization and maintenance of a county planning commission."

> (c) The general pattern and intensity of land use and open space;
> (d) The general land, water, and air transportation systems, and utility and communication systems;
> (e) General locations and extent of public and private works, facilities, and services;
> (f) General locations and extent of areas for conservation and development of natural resources and the control of the environment;
> (g) Long-range programming and financing of capital projects and facilities.

R.C. 713.23(B)(1).

After a regional or county planning commission prepares a regional or county plan as provided by R.C. 713.23, the commission is required to certify a copy of the plan to, *inter alia*, the board of county commissioners. R.C. 713.24. R.C. 713.25 thereafter addresses the adoption of a regional or county plan by a board of county commissioners, and the effect to be accorded such plan once it is so adopted. R.C. 713.25, provides, in pertinent part, as follows:

> The board of county commissioners may adopt [a regional or county plan that is certified under R.C. 713.24] so far as it relates to nonmunicipal territory. Thereafter no public building, roadway, bridge, viaduct, or other public improvement or utility, publicly or privately owned, whose construction or location would constitute a departure from the plan, shall be constructed or authorized by the board except by unanimous vote.

See generally State ex rel. The Ohio Power Co. v. Franklin County Reg'l Planning Comm'n, 158 Ohio St. 496, 498, 110 N.E.2d 415 (1953) ("plans and *recommendations* [of the county planning commission] are without legal effect until adopted by the county commissioners"); 1956 Op. Att'y Gen. No. 7114, p. 685, at 689 ("the plans made and certified by [planning commissions] are without any legal force or effect unless adopted by local municipal planning commissions or by the board of county commissioners").

Whenever a county or regional plan is adopted by a board of county commissioners, "the fact of such adoption shall be certified by the [board] to the regional or county planning commission." R.C. 713.27. "Thereupon such regional or county commission shall deposit a copy of so much of the regional or county plan as is affected by such adoption in the office of the county recorder." *Id.* It is thus apparent from the foregoing that a county is authorized to prepare and adopt plans for land use in the unincorporated territory of a township.

Similar authority is likewise conferred upon townships pursuant to R.C. Chapter 519, which authorizes a township, for the purpose of promoting the public health, safety, and morals, and when acting in accordance with a comprehensive plan, to adopt zoning regulations to regulate uses of land for certain purposes in the unincorporated territory of the township. *See* R.C. 519.02. Before proceeding with the zoning process, a board of township trustees must pass a resolution declaring its intention to proceed with township zoning under R.C. Chapter 519,

R.C. 519.03, and must create and establish a township zoning commission, R.C. 519.04. The township zoning commission is responsible for preparing a zoning plan, including text and maps, that sets forth its recommendations "for the carrying out by the board of township trustees of the powers, purposes, and provisions set forth in [R.C. Chapter 519], including additions to territory in which a township plan is in effect." R.C. 519.05. After holding at least one public hearing, the township zoning commission submits the zoning plan to the county or regional planning commission, if there is one, for approval, disapproval, or suggestions. R.C. 519.05-.07. If the zoning plan is disapproved or material changes are suggested by the planning commission, another public hearing must be held by the township zoning commission. R.C. 519.07. When the township zoning commission has completed its recommendations for a zoning plan, it certifies the zoning plan to the board of township trustees. *Id.*

Upon receipt of the certified zoning plan, the board of township trustees must hold a public hearing. R.C. 519.08. If the board determines that changes must be made to the zoning plan, the board resubmits the zoning plan to the township zoning commission for approval, disapproval, or suggestions. R.C. 519.09. After reviewing the board's changes, the commission resubmits the zoning plan to the board along with its recommendation. R.C. 519.09. Upon receipt of the commission's recommendations regarding the proposed changes, the board of township trustees must hold another public hearing.

Following the required public hearings and recommendations, the board of township trustees votes upon the adoption of the township zoning resolution. R.C. 519.10. If the board adopts the resolution, the board must submit the question of putting the proposed zoning plan into effect "to the electors residing in the unincorporated area of the township included in the proposed plan of zoning for their approval or rejection." R.C. 519.11. A majority of the votes cast must be in favor of the proposed zoning plan for zoning regulations to be put into effect. *Id.*

In addition, separate procedures are established for amending a township zoning resolution after it has been adopted. R.C. 519.12; *see* 1972 Op. Att'y Gen. No. 72-118 at 2-452 (R.C. 519.12 "provides the only means by which such zoning regulations may be amended or supplemented"). R.C. 519.12 provides that amendments to a township zoning resolution must be initiated by motion of the township zoning commission, by the passage of a resolution by the board of township trustees, or by the filing of an application by one or more owners or lessees of property. Upon the adoption of such motion, or the certification of such resolution or the filing of such application, the township zoning commission must schedule a public hearing and "transmit a copy of it together with text and map pertaining to it to the county or regional planning commission, if there is such a commission." R.C. 519.12. At the public hearing the township zoning commission shall consider the planning commission's recommendation to approve or deny the proposed amendment. *Id.* Following the public hearing, the township zoning commission must recommend to the board of township trustees the approval, denial, or modification of the proposed amendment and submit to the board such recommendation together with such application or resolution, the text and map pertaining to it, and the recommendation of the planning commission. *Id.*

The board of township trustees must, upon receipt of the township zoning commission's recommendation on the proposed amendment, schedule a public hearing. *Id.* Following the hearing, the board must adopt or deny the recommendations of the township zoning commission, or adopt a modification of the recommendations. *Id.*

An amendment to a township zoning resolution adopted by a board of township trustees becomes effective in thirty days unless a petition for a zoning referendum is submitted. *Id.* A referendum petition is valid when it is signed by a specific percentage of "registered electors residing in the unincorporated area of the township or part of that unincorporated area included in the zoning plan." *Id.* An amendment to a township zoning resolution that is submitted to referendum takes effect when "a majority of the vote cast on the issue is in favor of the amendment." *Id.*

The provisions of R.C. Chapter 519 authorizing township zoning thus provide a comprehensive system for land use management in the unincorporated territory of the township. Intrinsic to this authority is the power of township officials to prepare and adopt plans for land use in the unincorporated territory of the township. *See generally* R.C. 519.05 (a township zoning commission "may, within the limits of the moneys appropriated by the board [of township trustees] for the purpose, employ or contract with such planning consultants" and request the county or regional planning commission "to prepare or make available to the zoning commission a zoning plan, including text and maps, for the unincorporated area of the township or any portion of the same"); R.C. 713.23(B)(4) (a township may contract with a county or regional planning commission for planning assistance). *See generally also State ex rel. Corrigan v. Seminatore*, 66 Ohio St. 2d 459, 470, 423 N.E.2d 105 (1981) (a power may be fairly implied where it is reasonably related to the duties of the public agency); Stuart Meck & Kenneth Pearlman, *Ohio Planning and Zoning Law 2003 Edition*, 46 (2003) ("[t]he power to plan is implied in the police power, whether inherent or delegated through the constitution or state statutes"). Without these plans, it would be impossible for township officials to make reasonable decisions and recommendations when considering township zoning matters. Accordingly, a township, in the course of adopting or amending a township zoning resolution, is authorized to prepare and adopt plans for land use in the unincorporated territory of the township.[7]

In light of the foregoing, it is clear that both a county and township are authorized to prepare and adopt land use plans for the unincorporated territory of a township. It is further apparent that a township may prepare and adopt land use plans for the unincorporated territory of the township even when the county has prepared and adopted land use plans for this territory.

---

[7] Land use plans prepared and adopted by a township are to be used to aid township officials in making decisions and recommendations pertaining to the adoption or amendment of the township zoning resolution. The plans are not part of the township's zoning resolution, however, unless such plans have been made a part of the zoning resolution pursuant to the appropriate provisions of R.C. Chapter 519.

No provision in the Revised Code prohibits a township from preparing and adopting such plans when a county has prepared and adopted such plans. *Cf.* R.C. 519.22 ("[w]here the people of any township or part thereof have approved county rural zoning regulations in accordance with [R.C. 303.02-.25] prior to the adoption of a zoning resolution by the board of township trustees, and the township plan includes any area covered by the county rural zoning plan, the zoning resolution adopted by the board of county commissioners shall take precedence over the zoning resolution adopted by the board of township trustees, unless a majority of the voters in such zoned area of the township voting on the issue have voted to have the county rural zoning plan replaced with the township plan of zoning").

Similarly, no provision in the Revised Code prohibits a county from preparing and adopting land use plans for the unincorporated territory of a township when the township has prepared and adopted such plans. Thus, a county may also prepare and adopt land use plans for the unincorporated territory of a township even when the township has prepared and adopted land use plans for this territory. Therefore, both a county and township may prepare and adopt land use plans for the unincorporated territory of a township.

Where both have acted, and the plans contain inconsistent provisions, pursuant to R.C. Chapter 519, the township, rather than a county or regional planning commission, is conferred the primary authority to regulate land use in the township. When adopting or amending a township zoning resolution, a township may request planning assistance from a county or regional planning commission, R.C. 519.05; R.C. 713.23(B)(4), (5), and is required to solicit the recommendations of a county or regional planning commission on the proposed resolution or amendment, R.C. 519.07; R.C. 519.12(E); *see also* R.C. 713.23(B)(5). The township is not, however, required to adopt or follow the recommendations or plans of the planning commission. *Johnson v. Griffiths*, 74 Ohio L. Abs. 482, 141 N.E.2d 774 (Ct. App. Mahoning County 1955), *appeal dismissed*, 164 Ohio St. 393, 131 N.E.2d 397 (1955); *see* R.C. 519.05; R.C. 519.07; R.C. 519.12(E). *See generally Holiday Homes, Inc. v. Butler County Bd. of Zoning Appeals*, 35 Ohio App. 3d 161, 166, 520 N.E.2d 605 (Butler County 1987) ("the planning commission's role in zoning matters is limited…. [T]he county planning commission's role in zoning, as the commission's name suggests, is limited to such things as planning, gathering pertinent information, and making recommendations based thereon (concerning zoning and conditions created by existing zoning laws and the effects of proposed zoning changes)"). Thus, with respect to township zoning, the plans and recommendations of a county or regional planning commission do not control or restrict a township's exercise of its authority to adopt or amend a township zoning resolution.

Moreover, the provisions of R.C. Chapter 519 establishing a comprehensive system for land use management provide that the use of land in violation of a township zoning resolution is a criminal offense. R.C. 519.23; R.C. 519.99; 2002 Op. Att'y Gen. No. 2002-032 at 2-212. In contrast, a person or entity that fails to comply with a county land use plan adopted by the board of county commissioners does not thereby commit a criminal offense. *See* R.C. 713.23-.27. *See generally* Stuart Meck & Kenneth Pearlman, *Ohio Planning and Zoning Law 2003 Edition*, 76 (2003) (a land use plan adopted by a board of county commissioners "does not rise to the same

legally enforceable level as zoning"). Accordingly, a township zoning resolution and the amendments thereto with respect to land use within the unincorporated territory of a township control over whatever recommendations or plans a county or regional planning commission may otherwise propose in that regard. It reasonably follows, therefore, that a township's authority to exercise its planning powers is not proscribed when a county has prepared and adopted land use plans for the unincorporated territory of the township.

In your letter you suggest that provisions in R.C. 713.23 and R.C. 713.25 authorizing a county to prepare and adopt plans for land use in the unincorporated territory of the township appear to foreclose a township from preparing and adopting similar plans. As explained above, these provisions merely grant the county the authority to prepare and adopt plans for land use. No language in either of these statutes indicates that the General Assembly intended to limit the authority of another governmental entity to plan for land use within its territory when a county has prepared and adopted land use plans. *See generally* 1956 Op. Att'y Gen. No. 7114, p. 685 (syllabus, paragraph one) ("[t]he fact that a county planning commission has been created in a particular county, as provided in [R.C. 713.22] does not preclude action by the board of county commissioners of such county in cooperating in the creation of a regional planning commission under the provisions of [R.C. 713.21]").

Moreover, it is not uncommon for an activity or use of land to be subject to regulations enacted by two different governmental entities. *See, e.g.*, 2002 Op. Att'y Gen. No. 2002-038 (both a municipal corporation and township may establish and enforce requirements to protect ground water resources that serve as a source of drinking water for a public water system and that are located within scientifically derived wellhead protection areas situated entirely in the unincorporated territory of the township); 1997 Op. Att'y Gen. No. 97-023 (both a county building department and township building department may enforce the provisions of the Ohio Basic Building Code within the unincorporated territory of the township); 1988 Op. Att'y Gen. No. 88-053 (syllabus, paragraph four) ("[a] facility for the disposal of PCB's that is in compliance with state law governing air pollution control, solid waste disposal (other than the disposal of hazardous wastes), and water pollution control is not exempt from township zoning provisions by R.C. Chapter 3704, R.C. Chapter 3734, or R.C. Chapter 6111"); 1985 Op. Att'y Gen. No. 85-053 at 2-199 (stating that "the fact that a state agency has authority to regulate a certain activity does not, in itself, mean that a township may not enact zoning regulations which affect that activity" and concluding that township zoning and state regulation of urban sediment pollution may coexist). In fact, "when two authorities have the power to regulate an activity or use of land, there must be compliance with the regulations of both." 1988 Op. Att'y Gen. No. 88-051 at 2-228; *accord* 2002 Op. Att'y Gen. No. 2002-038 at 2-247; 1995 Op. Att'y Gen. No. 95-038 at 2-206. Thus, the authority granted to a county to prepare and adopt land use plans does not preclude a township from also preparing and adopting such plans. Nor does the fact that the county has some authority in this regard preclude our conclusion that the township's plan prevails when the two come in conflict.

You question whether the authority granted by R.C. 713.23(B)(5) to county and regional planning commissions to review, evaluate, and make comments and recommendations on

proposed and amended comprehensive land use plans of townships also prohibits a township from preparing and adopting plans for land use in the unincorporated territory of the township. While the language of R.C. 713.23(B)(5) authorizes a county or regional planning commission to review, evaluate, and make comments and recommendations on proposed and amended comprehensive land use plans, it does not require a planning commission to prepare such plans on behalf of a township. R.C. 519.05 states that a township zoning commission "may request" a county or regional planning commission to prepare or make available to the zoning commission a zoning plan. Use of the term "may" in this statute indicates that a township zoning commission has discretion whether to have a planning commission prepare land use plans for the township. *See generally Dorrian v. Scioto Conservancy Dist.*, 27 Ohio St. 102, 107, 271 N.E.2d 834 (1971) ("[t]he statutory use of the word 'may' is generally construed to make the provision in which it is contained optional, permissive, or discretionary"). Accordingly, neither R.C. 713.23 nor R.C. 713.25 prohibits a township from preparing and adopting plans for land use in the unincorporated territory of the township when a county has prepared and adopted land use plans for this territory. Thus, the township remains free to exercise zoning authority under R.C. Chapter 519, and, when so exercised, the township's authority trumps any inconsistent land use provision in the county plan.

Your second question asks whether the transfer of planning authority from the HCRPC to a township zoning commission will have an effect on the judicial review of a litigated zoning amendment. By way of example, you set forth the situation in which the validity of an amendment to a township zoning resolution is challenged in a legal proceeding before a court on the grounds that the amendment is inconsistent with a plan adopted by the HCRPC. Thus, in essence, your question is whether an amendment to a township zoning resolution is valid when a regional planning commission does not prepare land use plans before the township proceeds to amend its zoning resolution or when the amendment is inconsistent with land use plans previously prepared by the regional planning commission.

As explained previously, when a township amends its zoning resolution, the township is not required to have a regional planning commission prepare land use plans for the township. *See* R.C. 519.05; R.C. 713.23(B)(4)-(5). Further, no provision in the Revised Code requires that an amendment to a township zoning resolution be consistent with land use plans prepared by a regional planning commission.[8] Rather, in the zoning amendment process, all a township is required to do with respect to a regional planning commission is solicit the commission's recommendations on the proposed amendment. R.C. 519.12(E). As explained previously, a township is not required to adopt or follow the recommendations of a regional planning

---

[8] An amendment to a township zoning resolution must be consistent with constitutional provisions and must not conflict with other provisions of state or federal law. *See Yorkavitz v. Bd. of Township Trustees*, 166 Ohio St. 349, 351, 142 N.E.2d 655 (1957); *see, e.g.*, 1994 Op. Att'y Gen. No. 94-098 (syllabus, paragraph one); 1994 Op. Att'y Gen. No. 94-040 (syllabus, paragraph two).

commission.[9] *Johnson v. Griffiths*; *see* R.C. 519.12(E). *See generally Holiday Homes, Inc. v. Butler County Bd. of Zoning Appeals*.

Thus, there is no provision in the Revised Code mandating that a regional planning commission prepare land use plans before a township may amend its zoning resolution or that an amendment to a township zoning resolution be consistent with land use plans prepared by the regional planning commission. It follows, therefore, that an amendment to a township zoning resolution that is adopted in accordance with the provisions of R.C. Chapter 519 is valid, even though a regional planning commission does not prepare land use plans before the township proceeds to amend its zoning resolution or the amendment is inconsistent with land use plans previously prepared by the regional planning commission.[10] *See generally Cornell v. Bailey*, 163 Ohio St. 50, 58, 125 N.E.2d 323 (1955) ("[i]n the construction of a statute a court has no right to extend or improve the provisions of a statute to meet a situation not provided for. As much as we might desire to see these claimants receive unemployment benefits, we have no authority to add or supply language to the statute to accomplish that purpose when the statute does not so provide").

Your final question asks whether Hamilton County should take any legal action in response to the township trustees' transfer of planning authority from the HCRPC to the township's zoning commission. Whether the county should take legal action against the township in such a situation is a question that county officials must discuss with their legal

---

[9] Because an amendment to a township zoning resolution does not have to comport with a land use plan previously prepared by a regional planning commission, the amendment and plan may regulate the use of land differently. Nevertheless, "when two authorities have the power to regulate an activity or use of land, there must be compliance with the regulations of both." 1988 Op. Att'y Gen. No. 88-051 at 2-228; *accord* 2002 Op. Att'y Gen. No. 2002-038 at 2-247; 1995 Op. Att'y Gen. No. 95-038 at 2-206. Thus, although an amendment to a township zoning resolution may be inconsistent with a land use plan previously prepared by a regional planning commission, a person who is subject to the provisions of the zoning amendment and land use plan must attempt to comply with the provisions of both the zoning amendment and the land use plan.

[10] It must be remembered, however, that the interpretation of the validity of a particular amendment to a township zoning resolution rests ultimately with the judiciary. *See State ex rel. Davis v. Hildebrant*, 94 Ohio St. 154, 169, 114 N.E. 55 (1916) ("the power of determining whether a law or constitutional provision is valid or otherwise is lodged solely in the judicial department"), *aff'd*, 241 U.S. 565 (1916). We, therefore, cannot predict what a court might decide were it asked to determine the validity of an amendment to the Colerain Township zoning resolution.

counsel, the prosecuting attorney.[11] *See generally* R.C. 309.09(A) (the prosecuting attorney is the legal adviser of county officers and boards). As the county's legal adviser, a prosecuting attorney is required to, *inter alia*, advise county officials whether a particular legal position taken by them is frivolous, set forth legal actions and remedies available to county officials in a particular matter, and give his professional opinion as to the ultimate outcome of a legal action filed with a court. *See generally* Code of Professional Responsibility EC 7-5 ("[a] lawyer as adviser furthers the interest of his client by giving his professional opinion as to what he believes would likely be the ultimate decision of the courts on the matter at hand and by informing his client of the practical effect of such decision"). In discharging his duty to provide legal advice, a prosecuting attorney exercises professional judgment and discretion.

It is well settled that the Attorney General is not authorized to exercise on behalf of a prosecuting attorney discretion which has been delegated to him. *See* 1986 Op. Att'y Gen. No. 86-091 at 2-512; 1989 Op. Att'y Gen. No. 89-083 at 2-393. Moreover, it is not the function of the Attorney General, in connection with the rendering of legal opinions, to make determinations as to the county's legal rights in a particular matter. *See* 1986 Op. Att'y Gen. No. 86-091 at 2-512. *See generally* 1983 Op. Att'y Gen. No. 83-087 at 2-342 ("[t]he determination of particular parties' rights is a matter which falls within the jurisdiction of the judiciary"). Accordingly, whether any legal action should be taken by county officials against a township when the township transfers planning authority from a regional planning commission to the township's zoning commission is a decision that cannot be made by means of an Attorney General opinion. Rather, any decision in this regard must be made by county officials following consultation with the prosecuting attorney.

Based on the foregoing, it is my opinion, and you are hereby advised as follows:

1. Both a county and township may prepare and adopt land use plans for the unincorporated territory of a township.

2. An amendment to a township zoning resolution that is adopted in accordance with the provisions of R.C. Chapter 519 is valid, even though a regional planning commission does not prepare land use plans before the township proceeds to amend its zoning resolution or the amendment is inconsistent with land use plans previously prepared by the regional planning commission.

3. Whether any legal action should be taken by county officials against a township when the township transfers planning authority from a regional

---

[11] As explained in note four, *supra*, a prosecuting attorney does not have a duty to provide legal advice to a regional planning commission. A prosecuting attorney thus may not advise a regional planning commission whether to take legal action against a township that transfers planning authority from the regional planning commission to the township's zoning commission.

planning commission to the township's zoning commission is a decision that cannot be made by means of an Attorney General opinion. Rather, any decision in this regard must be made by county officials following consultation with the prosecuting attorney.

Respectfully,

JIM PETRO
Attorney General