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WHETHER ZONING REGULATIONS ADAPTED BY A TOWNSHIP PURSUANT TO §591.02, ET. SEQ. REVISED CODE, APPLY TO LANDS OWNED BY A CONSERVANCY DISTRICT CREATED PURSUANT TO CHAPTER 6101., R.C.—AND CONCERNING USE OF PROPERTY—§519.02 ET. SEQ., R.C. CHAPTER 6101., R.C. OAG NO. 4231, 1954, PAGE 470.

SYLLABUS:

1. Zoning regulations adopted by a township pursuant to Section 519.02 *et seq.*, Revised Code, do not apply to lands owned and used by a conservancy district created pursuant to Chapter 6101., Revised Code, in its statutory duties, nor to lands owned by such district and leased to private persons, associations or corporations as an integral part of the function of the district.

2. Zoning regulations adopted by a township pursuant to Section 519.02 *et seq.*, Revised Code, apply to lands owned by a conservancy district and leased to private persons, associations or corporations where the use of the property under the lease is not in furtherance of a function of the conservancy district (Opinion No. 4231, Opinions of the Attorney General for 1954, page 470, approved and followed).

Columbus, Ohio, June 23, 1960

Hon. Theodore Lutz, Prosecuting Attorney, Richland County
Richland Trust Building, Mansfield, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“The township zoning authorities of Monroe Township in this county, have posed a question as to whether or not the

Monroe Township Zoning Officers have authority to enforce Monroe Township Zoning Ordinance upon lands owned by and under the jurisdiction of the Muskingum Watershed Conservancy District and in the vicinity of Pleasant Hill Lake which lies in Monroe Township.

“Chapter 519 of the Revised Code has been thoroughly examined and is not dispositive of the question. Attorney General Opinion No. 4231 for 1954 rules that township zoning regulations are applicable to canal lands leased by the state pursuant to the provisions of Section 123.62, but I am fearful that the rule therein pronounced must be limited to the canal lands situation.

“The Court of Appeals for Defiance County in 98 Ohio App. Page 111, holds that a conservancy district is a distinct political subdivision of the state operating as a district entity of any county, city, or other political subdivision, and to the same affect is an annotation appearing in Ohio Juris. 2nd, Vol. 10, Page 18, which refers to 1907 Opinion of the Attorney General, Volume 1, Page 222, which held that a board of conservancy directors control all property in the district absolutely, both as to its tangible condition and constructed improvements. The opinion further holds that these powers of the conservancy directors supercede all other powers both of individuals and the public.

“Examination of Chapter 6101 of the Revised Code entitled ‘Conservancy Districts’ leads us to suspect that the board of directors has exclusive power to make any rules relative to the use, improvement and control of real estate within the conservancy district. It is recognized, of course, that the Conservancy Director in the State of Ohio, had no opportunity to vote upon the adoption of the zoning ordinance and I am of opinion that by general rules a township has no right or authority to legislate against the State of Ohio. However, this matter appears to me to be of such importance and of so widespread effect that it should be determined by Attorney General’s opinion rather than by this officer’s opinion.

“As may be assumed the question arises from a condition in which Monroe Township residents complain to their zoning authorities that lessees of conservancy lands in the region of Pleasant Hill Lake are not being required to obey the construction requirements adopted by Monroe Township and effective against other township areas not within the conservancy district.

“Will you therefore please advise whether or not a township zoning ordinance adopted by vote of the township residents in the unincorporated portions thereof is effective against lands owned and under the jurisdiction of the Muskingum Watershed Conservancy District.”

In Opinion No. 495, Opinions of the Attorney General for 1945, page 634, the syllabus reads :

“A zoning ordinance duly adopted by a municipality is not effective as against the state in locating, acquiring, constructing or using such public buildings and institutions as it deems necessary in the performance of its duties enjoined by law.”

This conclusion was based on the general rule that the state is not bound by the terms of a general statute unless it be expressly so enacted (*State, ex rel. Parrott v. Board of Public Works*, 36 Ohio St., 409; *State, ex rel. Attorney General v. Railway Company*, 37 Ohio St., 157; *Palumbo v. Industrial Commission*, 140 Ohio St., 54; *State, ex rel. Williams v. Glander*, 148 Ohio St., 188). I am of the opinion that the principle here applied to a municipal corporation which has extensive powers under the home rule provisions of the Constitution, would apply with even greater force to a township. In line with this reasoning is the ruling of one of my predecessors in Opinion No. 7111, Opinions of the Attorney General for 1956, page 667, in which the third paragraph of the syllabus reads :

“In the enforcement of zoning regulations adopted by a board of township trustees, pursuant to Section 519.02 *et seq.* Revised Code, the trustees are without authority to require that a permit be secured by a board of education for the erection of a public school building.”

In the case of *State, ex rel. Bowers, Pros., Atty., v. Maumee Watershed Conservancy Dist.*, 98 Ohio App., 111, the court held that a conservancy district is a distinct political subdivision of the state operating as a distinct entity independently of any county, city, or other political subdivision. As a political subdivision of the sovereign state a conservancy district, is, therefore, not subject to regulations which a subdivision is authorized to impose on *persons*, in the absence of express provision in the statute making the state and its agencies subject to such regulations (See Opinion No. 7111, *supra*, pages 672, 673).

The township in the case at hand had adopted zoning regulations pursuant to Chapter 519., Revised Code. Section 519.02, Revised Code, reads as follows :

“For the purpose of promoting the public health, safety, and morals, the board of township trustees may in accordance with a comprehensive plan regulate by resolution the location, height, bulk, number of stories, and size of buildings and other struc-

tures, including tents, cabins, and trailer coaches, percentages of lot areas which may be occupied, set back building lines, sizes of yards, courts and other open spaces, the density of population, the uses of buildings and other structures including tents, cabins, and trailer coaches, and the uses of land for trade, industry, residence, recreation, or other purposes in the unincorporated territory of such township, and for such purposes may divide all or any part of the unincorporated territory of the township into districts or zones of such number, shape, and area as the board determines. All such regulations shall be uniform for each class or kind of building or other structure or use throughout any district or zone, but the regulations in one district or zone may differ from those in other districts or zones."

It will be noted that this section contains no provision making the state and its agencies subject to the township regulations. Further, on reading the other sections contained in Chapter 519., *supra*, I am unable to find any such provision therein. Accordingly, I conclude that a township zoning regulation does not apply to a conservancy district in the use of its own lands.

It will be noted that although a conservancy district may include a considerable amount of land, all of this land is not owned by the district, and my conclusion as to the effect of a township zoning regulation applies only to lands *owned by the district*. Since your letter states that the lands in question *are owned by the district*, such lands if used by the district in the performance of its statutory duties are not subject to the township zoning regulation.

In your letter of request you state that "the question arises from a condition in which Monroe township residents complain to their zoning authorities that lessees of conservancy lands * * * are not being required to obey the construction requirements * * *." This raises another question as to the effect of the zoning requirements.

As discussed above, it appears to be well settled that the state and its agencies are not subject to regulations which a subdivision is authorized to impose on *persons*, in the absence of express provision in the statute making the state and its agencies subject to such regulations. This general rule, however, does not appear to necessarily apply to a lessee of the state or of a state agency. In this regard, it was stated in Opinion No. 4231, Opinions of the Attorney General for 1954, page 470 at pages 472, 473:

“The sole question, therefore, to be considered is whether or not this attribute of sovereignty that rests in the state passes in any degree to a lessee of the state. I can see no reason why it should. A very similar question was before me in Opinion No. 2768, which I issued on the 20th of June, 1953. There, it was held as shown by paragraph 2 of the syllabus :

“The state is not bound by the terms of a general statute unless it be so expressly provided by statute. Because there is no such express provision in Section 1261-16, *et seq.*, General Code, the health regulations adopted by a local board of health, as provided in Section 1261-42, General Code, are not binding on the state itself *but they are applicable to and may be enforced against lessees of the state.*’

(Emphasis added)

“The question there under consideration, grew out of certain regulations established by the Board of Health for the Highland County General Health District, relative to soft drinks and other foods, as applying to concessionaires holding leases of state owned property adjacent to Rocky Fork Lake. In the course of the opinion it was said :

“The reason for the rule that the state is not bound by general statutes unless expressly so provided is that such exemption is inherent in the nature of a sovereignty. 49 American Jurisprudence, 301, Section 91. It cannot be supposed on any theory, however, that the execution of a lease by the sovereign thereby confers on the lessee any of the attributes of sovereignty. *Indeed, the extension of a part of the sovereignty of the government can be effected only by legislative grant in express terms, and such enactments are interpreted most strongly against the grantee and in favor of the government.* 37 Ohio Jurisprudence, 739, 740, Section 418. I conclude, therefore, that lessees of the state division of parks are bound by the health regulations relating to food establishments promulgated by the boards of health of the districts in which such lessees are located.”

(Emphasis added)

“I do not wish to be understood as holding that the state would be powerless, under all circumstances, to grant a lessee of the state immunity from local zoning regulations. I can conceive of situations where, as an integral part of a state function, it would be entirely proper to grant to a lessee certain enumerated privileges which could not be interfered with except by an interference with the sovereignty of the state itself.”
The syllabus of Opinion No. 4231, *supra*, reads :

“Lawful zoning regulations adopted by the trustees of a township pursuant to Section 519.02 *et seq.*, Revised Code, will govern the use by lessees of Ohio canal lands leased by the State of Ohio pursuant to the provisions of Section 123.62 *et seq.*, Revised Code, to private persons, associations or corporations.”

Section 6101.16 (K), Revised Code, authorizes a conservancy district to lease real property. This, I will assume, authorizes the district to lease its own property. Your letter does not state the nature of the leases here in question, thus, I do not know whether they have been made to assist in the performance of the statutory duties of the district. If the leases have been granted as an integral part of the functions of the district then, in accord with Opinion No. 4231, *supra*, I would hold that the lessees are not subject to the township zoning regulation. If, however, the lands are merely leased with no intention that they will be used in the furtherance of a conservancy district function, I would hold that the lessees are subject to the township zoning regulation.

Accordingly, it is my opinion and you are advised:

1. Zoning regulations adopted by a township pursuant to Section 519.02 *et seq.*, Revised Code, do not apply to lands owned and used by a conservancy district created pursuant to Chapter 6101., Revised Code, in its statutory duties, nor to lands owned by such a district and leased to private persons, associations or corporations as an integral part of the function of the district.

2. Zoning regulations adopted by a township pursuant to Section 519.02 *et seq.*, Revised Code, apply to lands owned by a conservancy district and leased to private persons, associations or corporations where the use of the property under the lease is not in furtherance of a function of the conservancy district (Opinion No. 4231, Opinions of the Attorney General for 1954, page 470, approved and followed).

Respectfully,

MARK McELROY

Attorney General