

OPINION NO. 70-074**Syllabus:**

The provision contained in Section 711.05, Revised Code, restricting county commissioners from imposing a greater minimum lot size than 4800 square feet in the adoption of rules and regulations governing plats and subdivisions, does not invalidate a township zoning resolution imposing a greater minimum lot size upon the same platted subdivision or subdivisions.

To: Neil M. Laughlin, Licking County Pros. Atty., Newark, Ohio
By: Paul W. Brown, Attorney General, June 30, 1970

I have before me your request for my opinion which reads as follows:

"This office has been requested an opinion relative to the provisions of Section #711.05 of the Revised Code.

"A plat has recently been submitted for approval to the County Commissioners for an area in this county existing in a township in an unincorporated part thereof proposing to have water and sewage facilities with lots of square footage permitted by the existing township zoning ordinance. Reference being made to the aforesaid section of the Revised Code which in part specifies that the square footage requirements shall not impose a greater minimum lot area than 4800 square feet.

"This raises the question of whether a zoning ordinance in a township or health regulation must be limited by this particular section of the Revised Code or may they by such ordinances require greater minimums than the 4800 square feet as described in the aforesaid Section of the Revised Code.

* * *

Section 711.05, Revised Code, reads in part as follows:

"Upon the submission of a plat for approval, in accordance with section 711.04 of the Revised Code, the board of county commissioners shall certify thereon the date of such submission, and the approval of the board required by such section or the refusal to approve shall take place within thirty days thereafter or such further time as the applying party may agree to; otherwise such plat is deemed approved and may be recorded as if bearing such approval. The board may adopt general rules and regulations governing plats and subdivisions of land falling within its jurisdiction, to secure and provide for the coordination of the streets within the subdivision with existing streets and roads or with existing county highways, for the proper amount of open spaces for traffic, circulation, and utilities, and for the avoidance of future congestion of population detrimental to the public health, safety, or welfare but shall not impose a greater minimum lot area than 4800 square feet. * * *" (Emphasis added)

The adoption of rules and regulations governing plats and subdivisions which must be submitted for approval is permissive only as to the county commissioners, and the restriction governing minimum lot areas may or may not be imposed. Furthermore, the prohibition against the imposition of a greater minimum lot area than 4800 square feet contained in Section 711.05, supra, applies as against the county commissioners only. It cannot serve to control or restrict a township zoning resolution providing minimum lot areas. Under independent statutory authority, the board of township trustees may regulate the minimum size of lots by zoning resolution. Section 519.02, Revised Code, reads in part 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 structures, 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 * * *

The case of State, ex rel. Bugden Development Co. v. Kiefaber et al., 113 Ohio App. 523 (1961) clearly holds that this statutory language authorizes regulation of minimum lot sizes by township zoning resolutions and reads at page 526:

"A principal contention of relator is that the zoning statutes do not empower a township to regulate the minimum size of lots, frontages, yard depths, etc., and that such provisions in this resolution bear no reasonable relationship to the public health, safety and morals.

"Section 519.02, et seq., Revised Code, provides that such powers may be exercised by township trustees and electors. A zoning resolution adopted in accordance with these statutes, if reasonably related to promotion of the public health, safety and morals, may regulate, among other things, 'percentages of lot areas which may be occupied; set back building lines, sizes of yards, courts, and other open spaces, the density of population * * *.'"

In the foregoing case, a township zoning resolution requiring a minimum lot size of 20,000 square feet was upheld. In another case, State, ex rel. Grant, v. Kiefaber, et al., 114 Ohio App. 279 (1960), a township zoning ordinance requiring a minimum lot size of 80,000 square feet was sustained and held valid.

I am of the opinion therefore, and you are so advised that the provision contained in Section 711.05, Revised Code, restricting county commissioners from imposing a greater minimum lot size than 4800 square feet in the adoption of rules and regulations governing plats and subdivisions, does not invalidate a township zoning resolution imposing a greater minimum lot size upon the same platted subdivision or subdivisions.