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SYLLABUS:

The statements in paragraph 3, Section 519.12, Revised Code, relating to the contents of the written notice do not refer as such to the procedure to be followed under Section 519.12, but merely provide that the notices, in addition to other requirements, state the procedure applicable to the county or regional planning commission and township trustees as the case may be pursuant to paragraphs 4, 5 and 6 of said Section.

Columbus, Ohio, March 8, 1963

Hon. Loren E. Van Brocklin
Acting Prosecuting Attorney
Mahoning County
Youngstown, Ohio

Dear Sir:

Your letter requesting the opinion of my predecessor reads as follows:

“The above captioned code section (Ohio Revised Code 519.12) sets out the procedure for amendments or supplements to zoning resolutions. The last sentence in paragraph 3 of the above captioned code sets out the requirements that notices show time, place and nature of the change and the statement that after the hearing,

“the matter will be referred for further determination to the county or regional planning commission
* * *’

“The language above quoted and the language in the 4th and supplement paragraphs shall indicate that an amendment or supplement to a zoning ordinance should be submitted twice to the county planning commission.

“The Planning Commission of Mahoning County has raised the question as to whether or not this is so. We would appreciate your opinion on this matter.”

The procedure for amending and supplementing township zoning ordinances is set forth in Section 519.12, Revised Code, and is outlined herein for consideration.

Paragraph 1 designates the various ways in which such amendment proceedings may be initiated.

Paragraph 2 provides that upon proper initiation the township zoning commission shall hold a public hearing and notice shall be given by publication. Such hearing shall not be less than twenty nor more than forty days from the date proceedings are initiated.

Paragraph 3, with which we are concerned, states that when ten or less parcels of land are involved written notice of the public hearing shall be mailed at least twenty days before the hearing to

persons falling within the operation of this paragraph and that such notices shall contain the following :

“* * * The published and mailed notices shall set forth the time and place of the public hearing, the nature of the proposed amendment or supplement and *a statement that after the conclusion of such hearing the matter will be referred for further determination to the county or regional planning commission and to the board of township trustees as the case may be.*” (Emphasis added)

Paragraph 4 directs that within five days after proceedings are initiated the township zoning commission shall refer the proposed zoning change to the county or regional planning commission.

Paragraph 5 provides that such planning commission shall recommend its approval, disapproval or modification of the plan and that its recommendation shall be considered at the public hearing.

Paragraph 6 states that after the public hearing the township zoning commission shall submit its recommendation together with the text and map of the proposed change and the recommendation of the planning commission to the board of township trustees.

The remaining paragraphs of Section 519.12, *supra*, relate to the adoption by the township trustees and final approval or disapproval of the zoning amendment or supplement. These provisions are not applicable to the question you have raised and therefore shall not be considered.

Upon reviewing the above outline, a patent ambiguity stands out between the statement of procedure to be set forth in the written notice provided for in paragraph 3 and the procedure set forth in the other paragraphs of Section 519.12, *supra*. Aside from the cited portion of paragraph 3, there is no other provision stating that referral of the proposed zoning change is to be made to the county or regional planning commission after the conclusion of the public hearing. To the contrary, paragraph 6 of Section 519.12, *supra*, provides as follows :

“The township zoning commission shall, within thirty days after such hearing, recommend the approval or denial of the proposed amendment or supplement, or the approval of some modification thereof and submit such recommendation together with such application or resolution, the

text and map pertaining thereto and the *recommendation* of the county or regional planning commission thereon to the board of township trustees.” (Emphasis added)

The recommendation (note the singular designation) of the planning commission to be submitted to the trustees refers to the recommendation required under paragraph 4 *prior* to the public hearing. This conclusion is supported by the fact that when the amending procedure of Section 519.12, *supra*, was changed in 1956 by Amended House Bill No. 948, 127 Ohio Laws, 1264, the procedure was in substance the same as that outlined above with the exception of the complete omission of paragraph 3 and the provisions thereof. The 1956 amendment provided that only prior to the public hearing would the plan for the proposed zoning change be referred to the planning commission for its recommendation. The recommendation would be considered at the public hearing and thereafter submitted to the township trustees. The two subsequent amendments to Section 519.12, *supra*, as hereinafter discussed, added the requirements for written notices but did not contain any provision for supplementing or changing the procedural steps as enacted in 1956.

Paragraph 3 was added in 1957 by Amended Senate Bill No. 403, 127 Ohio Laws, 371, in which it provided that written notice of the public hearing by the zoning commission would be mailed to property owners living within or contiguous to the area to be affected. The 103rd General Assembly enacted Amended Senate Bill No. 112, 128 Ohio Laws, 130 which rewrote paragraph 3 in its present form and included the statements of fact to be contained in the written notices. The only other change made by Amended Senate Bill No. 112, *supra*, was that published notice for the later public hearing by the township trustees would state the time and place and a summary of the proposed amendment or supplement.

It is to be noted that the words “will be referred for further determination to the county or regional planning commission” go only to the matter of the contents of the notice. To take these words literally and extend their force and effect to the creation of another procedural requirement would be beyond the scope of their use and would result in an inconsistency in the law. Such a result should not be presumed to have been the intent of the legislature. Even if the

legislature intended to create an additional requirement, it can not be accomplished within the meaning of that which it did enact in paragraph 3. On the basis of the foregoing discussion, it is my opinion that an amendment or supplement to a zoning ordinance shall not be submitted twice to the planning commission but shall be submitted only once for recommendation prior to the public hearing in accordance with paragraph 4 as outlined on page 3.

The remaining question then is what is the purpose and effect of the provision in paragraph 3 that the notice contain a statement that at the conclusion of the hearing the matter will be referred for further determination by the planning commission and township trustees. It is necessary to direct your attention to the concluding phrase of that paragraph as set out on page 3 of this Opinion. It is my opinion the direction in that paragraph is that the notice contain a statement setting out the procedure relating to the planning commission and township trustees "as the case may be" pursuant to the applicable provisions of Section 519.12, *supra*. Therefore, the only explanation for the statement made regarding the planning commission is that the procedural reference was simply in error. This error may be attributed to the possible confusion of this procedure with that relating to zoning ordinances wherein Section 519.07, Revised Code, directs that the zoning plan shall be referred to the planning commission after the public hearing.

My conclusion as to the effect of the portion of paragraph 3 referred to in your request letter was also that of my predecessor who issued an opinion on the same question raised under Section 303.12 of the Revised Code. This section applies the exact same procedure as Section 519.12, with the only difference being that Chapter 303., Revised Code, deals with county rural zoning. I concur with Opinion No. 1089, Opinions of the Attorney General for 1960, page 11, which concluded that the third paragraph of Section 303.12, which is exactly similar to the third paragraph of Section 519.12, *supra*,

"does not refer to procedure, as such, but merely directs that such published and mailed notices should contain such facts as are applicable in a given situation."

It is therefore my opinion that the provision in paragraph 3, Section 519.12, *supra*, providing that the published and mailed notices contain "a statement that after the conclusion of such hearing the matter will be referred for further determination to the county or regional planning commission" does not require that an amendment or supplement to a zoning ordinance be submitted to the county or regional planning commission at the conclusion of the public hearing. It is further my opinion that paragraph 3 provides that the notice shall set forth the applicable procedure regarding the county or regional planning commission and the board of township trustees in accordance with paragraphs 4, 5 and 6 of Section 519.12, Revised Code.

Respectfully,
WILLIAM B. SAXBE
Attorney General