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1. ZONING—RURAL—PROPOSED PLAN—APPROVAL OR REJECTION—SECTION 3180-10 G. C. PROVIDES QUESTION MUST BE SUBMITTED ONLY TO ELECTORS RESIDING IN UNINCORPORATED AREA OF COUNTY INCLUDED IN PROPOSED PLAN OF ZONING.
2. WHERE PROPOSED PLAN INCLUDES PART BUT NOT ALL OF TERRITORY OF TOWNSHIP ONLY ELECTORS RESIDING IN THAT PORTION OF TOWNSHIP SO INCLUDED ARE ENTITLED TO VOTE.

SYLLABUS:

1. The question of the approval or rejection of a proposed plan of rural zoning is, under the provisions of Section 3180-10, General Code, to be submitted only to the electors residing in the unincorporated area of the county included in the proposed plan of zoning.
2. Where a proposed plan of rural zoning which is submitted for approval under the provisions of Section 3180-10, General Code, includes part but not all of the territory of a township, only the electors residing in that portion of the township so included are entitled to vote.

Columbus, Ohio, April 9, 1951

Hon. G. L. Schilling, Prosecuting Attorney
Clinton County, Wilmington, Ohio

Dear Sir:

I have before me your letter requesting my opinion, and reading as follows:

“There is located in the south part of Clinton County, Ohio, Lake Cowan. Said lake comprises parts of three townships. In other words, there is land in Vernon, Washington and Adams Townships touching such lake.

“The citizens of Vernon Township and Adams Township pursuant to Section 3180-2, presented to the Board of County Commissioners a petition signed by the proper number of qualified voters residing in said townships in accordance with said above mentioned section.

“Pursuant to Section 3180-3 of the General Code of Ohio the Board of County Commissioners appointed a rural zoning

commission and said commission were duly sworn and qualified as members of such rural zoning commission, and feeling that it was necessary from time to time to have the advice of experts with reference to rural zoning to make such recommendations, the preparations of maps and drawings, plans, specifications and other matters relating to rural zoning and said commission employed the said The Jennings-Lawrence Company, of Columbus, Ohio, to make such preliminary studies, surveys, maps and recommendations, preparations of proposed zoning regulations and rules, and said The Jennings-Lawrence Company have so done.

“Pursuant to Section 3180-5, public hearings were had in Vernon Township and Adams Township after due public notice having been given in accordance with law. After a careful study was made by the Jennings-Lawrence Company it was their opinion as well as the opinion of the rural zoning commission not to include the entire township of either Vernon or the entire township of Adams but the problem that was to confront us would confront us around the lake; therefore, portions of Vernon Township and portions of Adams Township were included in said maps and the rules and regulations with reference to rural zoning were made, of course, for the area which is sought to now be zoned. In other words, only a portion of Adams Township abutting upon said lake was included in said maps and proposed zoning resolution and only a portion of Vernon Township was included in said maps and zoning resolution.

“Our question with reference to voting upon said proposed zoning plan would be simple did it incorporate an entire township because there certainly would be no question but what the electors of that township could vote upon the same.

“Section 3180-10 of the General Code provides the ways and means of voting upon said zoning proposition and in part, said section reads as follows: ‘Shall be put into effect to be submitted to the electors in the unincorporated area of the county included in the proposed plan of zoning for their approval or rejection * * *.’

“Our specific question is merely this one: In view of the fact that the proposed zoning does not comprise an entire township, do just the electors residing within that particular area of the township sought to be zoned have a vote, or do all of the electors of the township have a vote in view of the fact that the part to be zoned is a part of said township. In other words, I think it can be admitted that a part of a township may be included in a zoning resolution but if it is, do just the electors within that part to be zoned have a vote or is a township to be considered as an entirety and all of the electors of that township vote upon the same?

“We are counting on presenting this matter at a special

election to be held as soon as possible, and would appreciate your opinion as to who is, or is not eligible to vote upon this proposed rural zoning.”

The statutes relating to county rural zoning are comprised in Sections 3180-1 to 3180-25 of the General Code. Section 3180-1 reads as follows:

“For the purpose of promoting public health, safety, morals, comfort or general welfare; to conserve and protect property and property values; to secure the most appropriate use of land; or to facilitate adequate but economical provision of public improvements, all in accordance with a comprehensive plan, the board of county commissioners of any county is hereby empowered to 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 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 county and for said purposes may divide *all or any part of the unincorporated territory of the county into districts or zones of such number, shape and area* as said county commissioners may determine. 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.” (Emphasis mine.)

A reading of the above section might give one the impression that the first duty of the county commissioners desiring to avail themselves of the provisions of the county rural zoning law, is to divide all or some part of the unincorporated territory of the county into districts or zones, and to adopt regulations for buildings or other structures for use throughout any of such districts or zones.

It appears from the succeeding sections that the actions referred to in the section quoted are the *final* steps on the part of the county commissioners, after a rather complicated procedure has been followed. Section 3180-2, General Code, provides in part:

“Before availing itself of the powers conferred herein, the board of county commissioners shall pass a resolution declaring its intention to proceed under the provisions of this act. * * *”

Section 3080-3, General Code, provides that the board of county commissioners “proceeding hereunder” shall create and establish a county

rural zoning commission, composed of five members who reside in the unincorporated area of the county. By the sections which follow, this zoning commission is authorized to lay out a plan, and after several hearings its recommendation is submitted to the county commissioners in the form of a resolution for their adoption. I do not deem it necessary to go into detail as to these steps since your letter states, and I shall assume, that all these preliminary steps have been duly taken.

We come then, to Section 3180-10, General Code, which governs the election to which your letter refers. That section reads as follows:

“If the zoning resolution is adopted by the board of county commissioners, the board of county commissioners shall cause the question of whether or not the proposed plan of zoning shall be put into effect to be submitted *to the electors residing in the unincorporated area of the county included in the proposed plan of zoning* for their approval or rejection at the next primary or general election, or a special election may be called for this purpose. No zoning regulations shall be put into effect *in any township*, unless a majority of the votes cast on the issue *in that township* is in favor of the proposed plan of zoning. Upon certification by the board of elections the resolution shall take immediate effect *in all townships which voted approval, eliminating from the plan any township which did not vote approval.*”

(Emphasis mine.)

The language of the first sentence of this section, as well as that used in other sections relating to the subject appear to me to contemplate that the plan submitted by the county rural zoning commission and approved by the county commissioners and submitted to the electors is to be submitted only to the “electors residing in the unincorporated area of the county included in the proposed plan of zoning *for their approval or rejection.*” If the language just quoted stood by itself, I do not believe that any question could or would be raised as to its meaning.

The second sentence of the section just quoted may seem to suggest that a township *as a whole* has voted approval or disapproval. However, there is neither here nor any other place in the act any express provision for submitting the proposition to the electors of the entire township. Nor is there anything in the act which requires or suggests that townships as a whole are to be considered in determining the area to be covered by a zoning plan.

On the contrary, it appears to me that an examination of the entire

act, which includes also a system of township zoning, Sections 3180-26 to 3180-50, General Code, discloses many provisions which indicate a legislative intent to disregard township areas in their entirety, in establishing zoning areas and regulations. In the first place, no township can be embodied as an entirety in a zoning plan if it contains a municipality, since the scope of the entire act is limited to the "*unincorporated area of the county.*" Section 3180-1 *supra*, which as I have pointed out describes the final action of the county commissioners, gives them authority to divide all or *any part* of the unincorporated area of the county into districts or zones of such number, *shape and area* as they may determine.

In the course of the making of a plan by the county rural zoning commissioner, under the provisions of Section 3180-4, General Code, such commission is authorized to request from the county or regional planning commission, if any there be, "a zoning plan, including text and maps, for the unincorporated area of the county or *any portion* of the same." No reference is made to any township lines.

Again, I find in Section 3180-5, General Code, a provision requiring the rural zoning commission before submitting its plan to the county commissioners, to hold a public hearing thereon in each township *affected* by the proposed plan. It is obvious that a township might be "affected" by the plan which included only a portion of its territory. But the use of those words instead of "included in" appears to me to strengthen the conclusion that townships as such were not contemplated by the legislature as being necessarily included in a zoning plan or in the area of a district.

I call attention also to Section 3180-25, General Code, which provides a process whereby an adopted county zoning plan may be repealed. That section provides in part:

"* * * The board of county commissioners (a) may adopt a resolution upon its own initiative, and (b) shall adopt a resolution if there is presented to it a petition signed by a number of qualified voters residing in the *unincorporated area of such township included* in the zoning plan equal to not less than 8% of the total vote cast for all candidates for governor in such area at the last preceding general election at which a governor was elected, requesting the question of whether or not the plan of zoning *in effect in said township* shall be repealed to be submitted to the electors residing in the *unincorporated area of the township included in the zoning plan*, at the next primary or general election. * * *"

(Emphasis added.)

The language of this section, "the unincorporated area of the township included in the zoning plan," indicates that it is not the voters in the unincorporated area of the entire township to whom the proposition is to be submitted, but only to the voters in that part of such area which is included in the plan.

In other sections of the act we find that the electors in a portion of a township are given authority to initiate certain proceedings or to take action that will affect the final determination. For instance, in Section 3180-2, General Code, relating to the action of the board of county commissioners in passing the resolution declaring its intention to proceed under the act, it is provided that the board of county commissioners may adopt such a resolution upon its own initiative, and shall adopt such a resolution if there is presented to it a petition signed by not less than 8% of the qualified electors residing in the unincorporated area of each township *or part thereof* to be included in the zoning plan.

We find also, in Section 3180-11, General Code, a proceeding whereby amendments or supplements to the zoning resolution may be made in the same manner provided for the adoption of the original resolution except that such amendments or supplements may be made without submitting them to a vote of the electors, unless within thirty days after the adoption of the amendment there is presented to the board of county commissioners a petition signed by "not less than 8% of the electors residing in the unincorporated area of the township *or part thereof* included in the zoning plan," in which case the board of county commissioners is required to submit the amendment or supplement to the electors "of such area."

A somewhat kindred provision is found in the laws relating to the changes in the territorial boundaries of school districts. For instance, in Section 4831-15, General Code, there is provision for the submission to the electors residing in a portion of a village school district which forms part of another municipality, and upon the result of that vote the transfer of such portion of such territory is determined. There are other provisions in the laws relating to the transfer of school territory such as Section 4831 et seq. of the General Code, which authorize transfers to be initiated or blocked upon the filing of petitions or remonstrances signed by a certain per cent of the qualified electors residing in the portion of a school district affected.

In the light of all these provisions, I conclude that the electors referred

to in Section 3180-10 supra, to whom the plan finally adopted by the county commissioners is to be submitted, are those who reside in the portion of a township included in the plan, and do not include the electors in the entire township or even the electors in the entire unincorporated area of the township.

It also seems clear that the concluding sentence of Section 3180-10, supra, was not intended to confer a right of voting on the electors of the entire township affected, but only to eliminate from the final zoning plan any township whose electors, in the portion included in the plan, had voted adversely.

In specific answer to your question it is my opinion :

1. The question of the approval or rejection of a proposed plan of rural zoning is, under the provisions of Section 3180-10, General Code, to be submitted only to the electors residing in the unincorporated area of the county included in the proposed plan of zoning.

2. Where a proposed plan of rural zoning, which is submitted for approval under the provisions of Section 3180-10, General Code, includes part but not all of the territory of a township, only the electors residing in that portion of the township so included, are entitled to vote.

Respectfully,

C. WILLIAM O'NEILL
Attorney General