

OPINION NO. 1107

Syllabus:

Zoning regulations for a county, adopted pursuant to Section 303.26, et seq., Revised Code, must be submitted to a vote as provided in Section 303.11, Revised Code, to be effective in any township within the county.

To: Edwin T. Hofstetter, Geauga County Pros. Atty., Chardon, Ohio
By: William B. Saxbe, Attorney General, June 5, 1964

Your request for my opinion reads as follows:

"Gauga County is contemplating the exercise of some of the rights authorized by the Legislature under Sections O. R. C. 303.26 to 303.56 inclusive. Gauga County consists of sixteen townships, fourteen of which have township zoning resolutions and two of which are unzoned. As a result of the numerous zoning resolutions in effect, there are substantial differences in the relationship of the zoning pattern from one township to another. The County Commissioners, as well as the Planning Commission, contemplate the adoption of a general land use plan for the county. Proceedings under 303.26 et seq. authorize rather broad powers to the Board of Commissioners when the proper resolutions have been adopted. Section 303.26 et seq. is classified under the county rural zoning chapter, but seems to have little or no connection as such with the functions of county rural zoning. It is in this regard that the Planning Commission of Gauga County would, through our efforts, appreciate some clarification of the law.

"O. R. C. 303.22 states that township zoning regulations are to take precedence over a zoning resolution adopted by the Board of County Commissioners, unless a majority of the voters in the township area voting on the issue have voted to have the township plan of zoning replaced with the plan of county rural zoning. This section, therefore, leaves final zoning control with the township.

"The specific question now concerns the powers authorized under 303.37. What is the significance of the authority granted in 303.37 (H) where, in carrying out the purposes of 303.26 to 303.56 inclusive, the County Commissioners are granted authority to zone or rezone

any part of the county other than areas within the corporate limits of cities and other incorporated municipalities? Does this section mean that the County Commissioners may summarily, but in accord with 303.26-303.56, override township zoning to accomplish their purpose or purposes without regard to the present zoning status of the land in question under a township zoning resolution? In other words, in view of the fact that 303.37(H) falls under the county rural zoning chapter, would it be your determination that the authority herein granted would authorize zoning or rezoning under the procedural technique outlined for county zoning earlier in the chapter, or by a direct grant of power and authority to the Commissioners separate and apart from the earlier zoning requirements for county zoning?"

Sections 303.01 through 303.25, Revised Code, were originally enacted as enabling legislation allowing a county to promulgate comprehensive county-wide zoning regulations "for the purpose of promoting the public health, safety, and morals" of the county. Section 303.02, Revised Code. The procedures to be followed in enacting the county zoning regulations are described in Sections 303.02 through 303.11, Revised Code. Of importance here are the requirements of Section 303.11, Revised Code. This section provides that if a zoning resolution is adopted by the board of county commissioners, "such board 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." Further, that section declares that:

"No zoning regulations shall be put into effect in any township unless a majority of the vote cast on the issue in that township is in favor of the proposed plan of zoning."

This provision is reaffirmed in Section 303.22, Revised Code.

In 1959 the legislature enacted Sections 303.26 to 303.56, inclusive, and Section 303.99, Revised Code, which provide for the eradication of slum or blighted areas within the county through "county renewal projects." Section 303.26, Revised Code. The avowed purposes of these latter sections are the same as Sections 303.01 through 303.25, supra, viz., to promote "the public health, safety, morals, or welfare" of the county. Section 303.26, Revised Code. These sections are therefore in pari materia and it must be assumed they were intended to be consistent and harmonious in their several parts and provisions.

As an incident to its undertakings for the elimination and prevention of the development or spread of slums and blight, as these terms are defined in Section 303.26, Revised Code, the county is granted power "to zone or rezone any part of the county other than areas within the corporate limits of cities and other incorporated municipalities." Section 303.37, Revised Code. The procedures to be used in promulgating these county zoning regulations are not set forth in Section 303.26, et seq., Revised Code,

and therefore must be presumed to be controlled by the procedures outlined in Section 303.01 to 303.11, inclusive, Revised Code.

A contrary conclusion would require that Section 303.37, Revised Code, be construed as an implied exception to the restrictions on the operation of zoning regulations in the township contained in Section 303.11, Revised Code. The rule is, however, that exceptions must appear plainly from the express words or necessary intentment of the statutes (State v. Ferguson, 96 Ohio App., 297 (1954) and I can find no such expression or intention in this instance.

It is therefore my opinion and you are advised that zoning regulations for a county, adopted pursuant to Section 303.26, et seq., Revised Code, must be submitted to a vote as provided in Section 303.11, Revised Code, to be effective in any township within the county.