

255

ZONING—AMENDMENT TO TOWNSHIP ZONING REGULATIONS—REFERENDUM PETITION—REFERENDUM ON WHOLE AMENDMENT AND NOT TO SECTIONS SERIATIM.

SYLLABUS:

Section 519.12, Revised Code, which provides for a referendum on amendments to township zoning regulations does not permit the referendum petition to be directed to only one or more of the several sections of the amendment, but requires that it be directed to the entire amendmnt.

Columbus, Ohio, March 25, 1957

Hon. John S. Ballard, Prosecuting Attorney
Summit County, Akron, Ohio

Dear Sir:

I have before me your request for my opinion, reading as follows:

“1. Revised Code Section 519.12 provides for amendment of the zoning regulations of a township in which zoning regulations have been adopted. If an amendment adopted according to the provisions of Revised Code Section 519.12 contains several distinct sections, may the referendum petition provided for in Section 519.12 be directed to only one or more of the distinct sections of the amendment, or must it be directed to the entire amendment?”

“2. In the event that the petition referred to may be directed to one or more of the distinct sections of the amendment, does the balance of the amendment not referred to in the referendum petition become effective thirty days from the date of the adoption of the amendment by the Board of Trustees of the Township?”

Section 519.12, Revised Code, sets out, step by step, the procedure to be followed in promulgating and adopting amendments or supplements to zoning regulations, and specifically provides in pertinent part as follows:

“Within ten days after the certification of such resolution or the filing of such application the township zoning commission shall transmit a copy thereof together with text and map pertaining thereto to the county or regional planning commission, if there is such a commission.

“The board of township trustees shall, upon receipt of such recommendation, set a time for a public hearing on such proposed amendment or supplement, which date shall not be less than thirty days from the date of the receipt of such recommendation from the township zoning commission. Notice of such public hearing shall be given by the board of one publication in one or more newspapers of general circulation in the township, at least thirty days before the date of such hearing. Within twenty days after such public hearing the board shall either adopt or deny the proposed amendment or supplement or adopt some modification thereof. In the event the board denies or modifies the recommendation of the township zoning commission the unanimous vote of the board shall be required.

“Such amendment or supplement adopted by the board shall become effective in thirty days after the date of such adoption unless within thirty days after the adoption of the amendment or supplement there is presented to the board of township trustees a petition, signed by a number of qualified voters residing in the unincorporated area of the township or part thereof included in the zoning plan and affected by the amendment or supplement equal to not less than eight per cent 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 board of county commissioners to submit the amendment or supplement to the electors of such area for approval or rejection at the next primary or general election.”

Thus, before an amendment to the zoning regulations of a township becomes effective, it is necessary under Section 519.12, Revised Code, that the proposal be submitted to the township zoning commission, and to the county or regional zoning commission, if there be one, for approval, disapproval, or modification. In transmitting a copy of the proposal to these agencies, there must be included “the text and map” pertaining to the amendment, and this language suggests the necessity of including the text of such amendment in toto. Thereafter, the statute provides that the proposal be approved before being certified back to the board of township trustees, and that board must then hold a hearing after publication of notice thereof.

These requirements contemplate action on the amendment as a whole, and any part deleted or modified would actually change the comprehensive plan of zoning for the region.

This conclusion is attested to by the further requirement of Section 519.12, Revised Code, that if the board of township trustees does not

follow the recommendations of the zoning commissions, there must be unanimous approval by the board of any departure from the amendment approved by such commissions.

Thus it appears that where all the statutory requirements have been met, and the board has approved the amendment, not necessarily unanimously, the same becomes effective unless within thirty days the petition for referendum is filed as provided in Section 519.12, Revised Code.

If the referendum petition is directed only to one of the several distinct sections of the amendment, and that section were voted down, there would be left operative a part only of the amendment as approved by the zoning commissions, thereby possibly upsetting the comprehensive plan in operation, and this would have been accomplished without the unanimous approval of the board of township trustees as this section requires.

This procedure would also seem to invalidate the hearing held by the board, for that hearing was on the entire amendment including the section or sections invalidated by the referendum. In direct answer to your first question, therefore, it is my opinion that the purpose of the statute would be substantially defeated by a procedure which would permit the referendum petition to be directed to only one or more of the distinct sections, thus the amendment must stand or fail in its entirety for the statute to be effective.

The conclusion thus reached as to your first question makes it unnecessary to consider your further question as to the legal effect of a referendum on only a part of the entire amendment. In specific answer to your inquiry, therefore, it is my opinion that Section 519.12, Revised Code, which provides for a referendum on amendments to township zoning regulations does not permit the referendum petition to be directed to only one or more of the several sections of the amendment, but requires that it be directed to the entire amendment.

Respectfully,
WILLIAM SAXBE
Attorney General