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SYLLABUS:

A board of township trustees may, by resolution adopted under authority of Chapter 519, Revised Code, require that reasonable fees accompany applications made to the zoning inspector or other administrative official for zoning variances or special exceptions, to cover the costs of processing such applications.

Columbus, Ohio, May 20, 1963

Hon. Edwin T. Hofstetter
Prosecuting Attorney
Geauga County
213 Main Street
Chardon, Ohio

Dear Sir:

Your request for my opinion reads, in part, as follows:

“One of the township zoning resolutions in Geauga County specifies the following requirement:

“‘Every application requesting a variance or special exception as specified by this resolution shall be accompanied by a fee of twenty-five (\$25.00) dollars. Such fees shall be collected by the zoning inspector and deposited with the trustees and become a part of the general funds of the township.’

“The legality of the above requirement has been raised with this office. In view of the public interest in the matter, by reason of the additional authority granted to the township Board of Zoning Appeals in Part C of O.R.C. 519.14, which reads as follows:

“‘(C) To grant conditional zoning certificates for the use of land, buildings, or other structures, if such certificates for specific uses are provided for in the zoning resolution,’

“we would appreciate your consideration of the question of whether the board may require a reasonable fee to be applied to the general township funds to help defray the administrative costs connected to the processing of such application. The question is significant, since the Board of Zoning Appeals is given original jurisdiction over applications for a conditional zoning certificate, and an application fee to the township zoning inspector is not a condition precedent to the application for the conditional zoning certificate. We would appreciate consideration on the possible distinction that may exist for the requirements of a fee for variances from the zoning inspector’s decision as compared with those matters where original jurisdiction is with the Board of Zoning Appeals.

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Two prior Attorney General Opinions have dealt with subjects closely related to the question contained in your request. In Opinion No. 7111, Opinions of the Attorney General for 1956, at page 667, the first two syllabi are as follows:

“1. A board of township trustees, in adopting zoning regulations as authorized by Section 519.02 et seq. of the Revised Code, and being authorized by Sections 519.16 and 519.17 Revised Code, to provide for inspection of buildings proposed to be erected or altered in the zoned area and to require permits for such erection or alteration, has implied power to provide in such regulations for the payment of reasonable fees for issuing such permits and for such inspection.

"2. The township trustees are without authority to impose such fees except by provision in such zoning regulations or by amendment thereto adopted as provided by Section 519.12, Revised Code."

In Opinion No. 1625, Opinions of the Attorney General for 1960, at page 553, the pertinent syllabus reads as follows:

"1. Neither a board of township trustees nor a township board of zoning appeals is authorized to require that the appellant in an appeal to such board of zoning appeals, made pursuant to Section 519.15, Revised Code, must pay the reasonable and necessary costs of postage and advertising relative to such appeal nor to require a deposit as security for the payment of such costs by the party filing the appeal.

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A reading of these two opinions discloses that the conclusion in the former was based on a power directly implied from the power to establish and enforce a "system of zoning certificates" under authority of Sections 519.16 and 519.17, Revised Code, while the conclusion in the latter opinion was based on the generally strict limitations on the powers of boards of township trustees and on the fact that Chapter 519, Revised Code, contains no specific grant of authority in the case of proceedings before a board of zoning appeals from which the power to impose a charge could be implied. I am in accord with the conclusions reached in these opinions of my predecessors and with the distinction implicit in their differing results.

In attempting to answer your request in the light of the above quoted opinions, I find that I must divide your question into two parts. Insofar as an application for a variance or special exception made to the zoning inspector or other administrative official is concerned, I must assume that some inspection of plans or sites would be necessary before the application could reasonably be acted upon and a certificate of variance or special exception either granted or denied. In such a case it is my opinion that the situation is substantially the same as that discussed in Opinion No. 7111, *supra*, and that, for the reasons there set out, a fee required by the township zoning regulations may legally be charged for the filing of such an application.

In your letter of request you refer to original jurisdiction in the board of zoning appeals over applications for conditional zoning certificates and suggest that the rationale outlined above might also be used to support the legality of a charge for those applications. Laying aside the question of whether a conditional zoning certificate is the same thing as the variance or special exception for which a filing fee is authorized by the zoning regulation quoted in your letter, I am unable to agree with your suggestion because I do not believe that the board of zoning appeals has original jurisdiction over the granting of conditional zoning certificates.

The powers of that board are set out in Section 519.14, Revised Code, as follows:

“The township board of zoning appeals shall have the following powers:

“(A) To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of sections 519.02 to 519.25, inclusive, of the Revised Code, or of any resolution adopted pursuant thereto;

“(B) To authorize, upon appeal, in specific cases, such variance from the terms of the zoning resolution as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the resolution will result in unnecessary hardship, and so that the spirit of the resolution shall be observed and substantial justice done;

“(C) To grant conditional zoning certificates for the use of land, buildings, or other structures if such certificates for specific uses are provided for in the zoning resolution.

“In exercising the above-mentioned powers, such board may, in conformity with such sections, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from, and may make such order, requirement, decision, or determination as ought to be made, and to that end shall have all powers of the officer from whom the appeal is taken.”

I note that the final paragraph of this section speaks of a power to “reverse,” “affirm” or “modify” in exercising the powers granted in paragraphs (A), (B), and (C). Such is the kind of action which

can be taken upon an appeal. Further, the tribunal in question is consistently referred to as the "township board of zoning *appeals*." Finally, I have carefully examined the other sections of Chapter 519, Revised Code, which deal with this board, and I find not a single provision, either substantive or procedural, which indicates anything but appellate jurisdiction. I must conclude, therefore, that the omission of any reference to appeals in paragraph (C) of Section 519.14, *supra*, is not significant and that the exercise of power there authorized is, like the powers granted in paragraphs (A) and (B), limited to appealed questions. In view of my opinion on this point, I am further constrained to conclude that, as to applications for conditional zoning certificates, any action by the board of zoning appeals must be considered taken as a part of an appellate function.

In specific answer to your question, therefore, it is my opinion and you are advised that a board of township trustees may, by resolution adopted under authority of Chapter 519, Revised Code, require that reasonable fees accompany applications made to the zoning inspector or other administrative official for zoning variances or special exceptions, to cover the costs of processing such applications.

Respectfully,

WILLIAM B. SAXBE

Attorney General