

OPINION NO. 88-005**Syllabus:**

When a proposed amendment to a township zoning resolution has been denied by the board of township trustees, the provisions of R.C. 519.12(H) for a referendum election do not apply.

To: Phillip J. Brumbaugh, Darke County Prosecuting Attorney, Greenville, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, February 5, 1988

I have before me your request for my opinion regarding the referendum procedure granted to the voters of a township in regard to amendments of an existing township zoning resolution. Your letter describes the situation as follows:

The facts underlying this request are that the concerned landowner had properly filed an application to amend the Franklin Township, Darke County, Zoning Resolution to redistrict property owned by him from a residential to a commercial classification. After proper notice and hearings, the Township Zoning Commission approved the proposed amendment but the Board of Township Trustees unanimously voted to deny the Commission's recommendation of approval. No administrative appeal pursuant to R.C. Chapter 2506 was taken from the action of the Board of Township Trustees. Rather, the concerned landowner filed with the Board of Trustees a referendum petition pursuant to R.C. 519.12(H), a copy of which I have enclosed herewith. The Petition has been transmitted to the Darke County Board of Elections to determine its sufficiency and validity but has not yet been certified to be placed on the ballot.

The statute to which you refer, R.C. 519.12, establishes the procedure for amending an existing township zoning resolution. R.C. 519.12 is part of a detailed statutory scheme governing township zoning which is set out in R.C. Chapter 519. The General Assembly has assigned specific roles in the implementation of this scheme to the board of township trustees, the township zoning commission, and the township electorate.

R.C. 519.02 authorizes the board of township trustees to exercise its zoning powers "in accordance with a comprehensive plan." The electorate may, by proper petition, require the trustees to set in motion the development of such a plan. R.C. 519.03. The township zoning commission is responsible for actual development of the plan, a process which involves at least one public hearing and review by the appropriate planning commission. R.C. 519.04-.07. The township zoning commission then certifies the plan to the board of township trustees. R.C. 519.07. The trustees conduct another public hearing, refer proposed changes back to the zoning commission, and then vote on adoption of the plan in the form of a township zoning resolution. R.C. 519.08-.10. If the resolution is adopted, it is presented to the township electors, who must approve it by majority vote before it may be implemented. R.C. 519.11.

An amendment to the township zoning resolution may be initiated by motion of the township zoning commission, by resolution of the board of township trustees, or by application of an owner or lessee of affected property. R.C. 519.12(A). Once so initiated, the township zoning commission transmits the proposed amendment to the regional or county planning commission, conducts a public hearing, and then submits the amendment and the commission's recommendations to the board of township trustees. R.C. 519.12(A)-(E). The trustees conduct another public hearing on the proposed amendment before voting. R.C. 519.12(E)-(G). At this point the referendum provisions involved in your question come into play. R.C. 519.12(H) provides, in pertinent part:

Within twenty days after such public hearing the board shall either adopt or deny the recommendations of the zoning commission 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 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 there is presented to the board of township trustees a petition, signed by a number of registered electors residing in the unincorporated area of the township or part thereof included in the zoning plan 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 township trustees to submit the amendment to the electors of such area for approval or rejection at a special election to be held on the day of the next primary or general election....

The form of a petition calling for a *zoning referendum* and the statement of the circulator shall be substantially as follows:

"PETITION FOR ZONING REFERENDUM..."

....

No amendment for which such *referendum* vote has been requested shall be put into effect unless a majority of the vote cast on the issue is in favor of the amendment. (Emphasis added).

In the instance you describe, the board of township trustees unanimously denied the proposed amendment to the township zoning resolution. The landowner who had applied for the amendment subsequently filed a petition to have the amendment submitted directly to the electorate. The petition was denominated as a petition for zoning referendum, and was filed pursuant to authority purportedly granted in R.C. 519.12(H).

Based upon the foregoing events you ask: "Do the provisions for a referendum election as set forth in Division (H) of R.C. Section 519.12 apply to situations where the proposed amendment to the Township Zoning Resolution has been denied by the Board of Township Trustees?"

I note first that the power to enact zoning regulations is a legislative function delegated to townships by the General Assembly. *Tuber v. Perkins*, 6 Ohio St. 2d 155, 216 N.E.2d 877 (1966).¹ The right of the people of a township to participate directly in the legislative process of township zoning is created entirely by statute and is not a constitutional right. *Cook-Johnson Realty Co. v. Bertolini*, 15 Ohio St. 2d 195, 239 N.E.2d 80 (1968). The exercise of a right conferred by statute is conditioned upon compliance with the requirements prescribed by the statute. See *Zier v. Bureau of Unemployment Compensation*, 151 Ohio St. 123, 84 N.E.2d 746 (1949) (syllabus, paragraph one) ("[t]he exercise of the right conferred is conditioned upon compliance with the accompanying mandatory requirements"). I must therefore examine R.C. 519.12 to determine whether a referendum may be held in the situation you describe.

By its express terms, R.C. 519.12(H) applies to zoning amendments "adopted by the board" and describes the vote as a "referendum."² In construing the language of R.C. 519.12, I am mindful of the rule of construction that "[w]hen particular words or phrases have in law acquired a fixed legal signification, and are thus incorporated into a statute, the legal presumption is, that the Legislature meant to use them in this legal sense." *Turney v. Yeoman*, 14 Ohio 207, 218 (1846). The word "referendum" is clearly a word having a fixed legal meaning. It has been defined as follows:

¹ I note in passing that, as a legislative function, the action of the board of township trustees on a proposed zoning amendment is not subject to the administrative appeal provisions of R.C. 2506.01. *Tuber* (syllabus).

² See also *Cook-Johnson Realty*, 15 Ohio St. 2d at 200, 239 N.E.2d at 84 ("[w]hat the General Assembly has done in Section 519.12, Revised Code, is to provide the people of the several townships with a power to veto, by use of the device of referendum, zoning resolutions passed by township trustees").

A referendum, as used in the constitution, statutes and charter, is the submission of the question of whether or not a statute, ordinance or resolution *already passed* by the legislative body shall become effective; the result, if the legislation is condemned, being a repeal of the statute, ordinance or resolution by the electors.

Buzek v. Stewart, 18 Ohio Op. 342, 346 (C.P. Hamilton County 1940) (emphasis added), *appeal dismissed*, 137 Ohio St. 539, 30 N.E.2d 997 (1940). *See also Black's Law Dictionary* 1152 (5th ed. 1979) ("[r]eservation by people of state, or local subdivision thereof, of right to have submitted for their approval or rejection, under prescribed conditions, any law or part of law *passed* by lawmaking body") (emphasis added).

In contrast to a referendum, an initiative is the electoral procedure by which voters act directly on legislation which has not first passed the legislative body. *See Pfeifer v. Graves*, 88 Ohio St. 473, 480-481, 104 N.E. 529, 531-532 (1913) (stating in a discussion of both referendum and initiative, that referendum applies to laws passed and initiative applies to bills not passed by the legislature); *State ex rel. Durrell v. Celebrezze*, 63 Ohio App. 2d 125, 128-129, 409 N.E.2d 1044, 1047 (Franklin County 1979) (noting that initiative provisions of the Ohio Constitution apply when the General Assembly rejects a proposed law); *Black's Law Dictionary* 705 (5th ed. 1979) (defining initiative as "[t]he power of the people to propose bills and laws, and to enact or reject them at the polls, *independent of legislative assembly*") (emphasis added). Thus, the petition described in your letter, while purporting to request a referendum, is actually requesting an initiative.

Where the language of a statute is plain and unambiguous, there is generally no need to resort to further interpretation. *Sears v. Weimer*, 143 Ohio St. 312, 55 N.E.2d 413 (1944) (syllabus, paragraph five). Nor may I read words into a statute which are not there. *Columbus Suburban Coach Lines, Inc. v. Public Utilities Commission*, 20 Ohio St. 2d 125, 127, 254 N.E.2d 8,9 (1969) ("[i]n determining legislative intent it is the duty of this court to give effect to the words used, not to delete words used or to insert words not used"). Since R.C. 519.12(H) is plainly worded, I am constrained to give considerable weight to the fact that while the statute expressly allows for a referendum when the board of township trustees has voted to adopt the amendment, there is no express provision allowing for an initiative when the trustees have voted to deny the amendment. Under the doctrine of *expressio unius est exclusio alterius*, I must presume that the silence of R.C. 519.12(H) in this regard is deliberate. *See generally State ex rel. Alden E. Stilson & Assoc. v. Ferguson*, 154 Ohio St. 139, 145-6, 93 N.E.2d 688, 691 (1950) (it is a well recognized rule of statutory construction "that the specification of one thing implies the exclusion of another").

I find support for this conclusion in the overall statutory scheme governing the enactment of township zoning resolutions. While the township voters may, by petition, require that the board of township trustees proceed with township zoning under the provisions of R.C. Chapter 519, R.C. 519.03, and the voters must accept or reject the initial plan in its entirety once adopted by the trustees, R.C. 519.11, no provision of R.C. Chapter 519 grants authority to the electorate to create new zoning provisions independently of the board of township trustees. Even where the voters have been granted authority to repeal the existing plan, R.C. 519.25, that authority may be exercised only with regard to the entire plan, and may not be limited to selected provisions. *See* 1964 Op. Att'y Gen. No. 1500, p.2-395. Thus, the statutory scheme is based upon the premise that the township zoning commission and the board of township trustees are responsible for the terms and overall integration of the zoning plan, or amendments thereto, and that voters have the right to accept or reject only those provisions which have first been approved by the trustees.

It is, therefore, my opinion, and you are hereby advised, that when a proposed amendment to a township zoning resolution has been denied by the board of township trustees, the provisions of R.C. 519.12(H) for a referendum election do not apply.