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A ZONING COMMISSIONS—ZONING ORDINANCES—DESIGNATED PORTION OF TOWNSHIP ZONES—NOTHING TO PREVENT ZONING BY SAME PROCEEDINGS OF ANOTHER PORTION OF SAME TOWNSHIP—SUCCESSIVE ACTIONS MAY BE TAKEN AS TO OTHER REMAINING PORTIONS OF TOWNSHIP—SECTION 519.02 RC—SECTION 3180-26 ET SEQ., G.C.

SYLLABUS:

Where proceedings have been had under Section 519.02, Revised Code, Section 3180-26 G. C., et seq., pursuant to which a designated portion of a township has been zoned, there is nothing to prevent the zoning by the same proceedings of another portion of the same township, and successive actions may be taken as to other remaining portions of the township, looking to the same end.

Columbus, Ohio, October 19, 1953

Hon. Wm. A. Ambrose, Prosecuting Attorney
Mahoning County, Youngstown, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"The following request received from the Planning Director of the Mahoning County Planning Commission, is herewith submitted to you for your opinion:

"The Smith Township Trustees and myself would like to obtain the State Attorney General's interpretation of certain sections of the Ohio General Code which pertain to the procedure to be followed by Township Trustees in appointing Zoning Commissions and adopting Zoning Ordinances. Particular reference is made to Section 3180-26 which reads in part, "for said purposes may *divide all or any part* of the unincorporated territory of the Township into districts or zones of such number, shape and area as said Township Trustees may determine;" and to Section 3180-28 which reads in part "said commission shall be composed of *five members who reside in the unincorporated area of the Township to be zoned.*"

"The Smith Township Trustees, proceeding under the premise that it is legal to zone any part of a township, appointed a Zoning Commission composed of residents in the area to be zoned, which in this case was an area of about one and a half ($1\frac{1}{2}$) square miles, from which a petition for zoning had been received. The Zoning Commission prepared a Zoning Ordinance for the area to be zoned and made their recommendation, held the public hearing required, then referred the Ordinance to the County Planning Commission for its recommendation, after which the Ordinance was submitted to the Township Trustees who held their public hearing and then certified the Ordinance to the Board of Elections to be placed on the ballot at a special election held the 15th of May, 1953. The election was held and the ordinance was adopted.

"Subsequent to the above action, residents of the area adjacent to the one zoned wished to adopt a zoning ordinance for their area. After discussing the matter with the Township Trustees, they submitted a petition to the Trustees requesting zoning for their area. The Township Trustees, after giving additional study to Sections 3180-26 and 3180-28, appointed a Second Zoning Commission composed of residents of the unincorporated area from which the petition was submitted. This

second Zoning Commission has drawn up a Zoning Ordinance. much of the wording of the Ordinance was taken verbatim from the Ordinance of the adjacent section of the township which was zoned. The new Zoning Commission has held the required public hearing on its Zoning Ordinance for the area under its jurisdiction, submitted the same to the County Planning Commission for the Commission's recommendation, and the Township Trustees have placed a notice for their public hearing on the Ordinance in the near future. They intend to certify the Ordinance to the Board of Elections for placement on the ballot at the forthcoming election in November.

"The principal question with regard to interpretation of the sections of the Ohio General Code referred to, or other pertinent sections, is whether the procedure followed in Smith Township is in accordance with the Ohio General Code? The question of secondary interest is, how many different Zoning Commissions and different zoning ordinances does the law permit in any one township?"

The statutes relative to township zoning are found in Sections 519.01 to 519.25, inclusive, of the Revised Code. The corresponding sections of the General Code were Sections 3180-26 to 3180-50, inclusive.

It appears from your letter that on and prior to May 15, 1953, proceedings were had in compliance with the provisions of the law, whereby a designated portion of Smith Township was duly zoned. Said proceedings were ratified by the electors of the area included in the resolution of the township trustees, on May 15, 1953.

Subsequent thereto, a like proceeding was begun, affecting a portion of Smith Township not included in the original zoning. It appears from your statement of facts that all of the steps prescribed by statute looking to the establishment of this new district and the adoption of a zoning plan for it have been taken excepting the final hearing by the trustees, their adoption of the zoning resolution, the certifying of such resolution to the board of elections and the submission to the electors, which as you state, is to be at the time of the regular municipal election in November.

It appears to me that when these last steps have been taken, the proceedings will be in all respects regular and in conformity with the law, except for the one question which you present, viz., may this second zoning procedure be taken when there has already been a completed zoning of a portion of the township? It is to be noted that in every step leading to the adoption of a zoning plan the particular area proposed to be zoned

is treated as a separate entity. Section 519.02, Revised Code, Section 3180-26, G. C., provides that the board of trustees of any township is empowered to adopt regulations for zoning "*all or any part* of the unincorporated territory of the township." In Section 519.04, Revised Code, Section 3180-28, G.C., provision is made for the preliminary appointment by the township trustees of a township zoning commission, which shall be composed of five members residing "in the unincorporated area of the township to be zoned," whose duty it is to prepare and submit a plan of zoning regulations for the proposed district.

Under the provisions of Section 519.11, Revised Code, Section 3180-35, G. C., the right of voting on the ratification of the plan adopted by the township trustees is definitely limited to the electors "residing in the unincorporated area of the township included in the proposed plan of zoning."

Section 519.37, Revised Code, Section 3180-37, G. C., provides for appointment by the township trustees of a township board of zoning appeals of five members, who shall be residents of the "unincorporated territory in the township included in the area zoned," and whose duties relate to the enforcement of an adopted plan.

All of these provisions make it very clear that the entire proceeding that was originally had for zoning a certain area of Smith Township, related to, and concerned that area alone. If, thereafter, the residents in all or part of the remaining area of the township desire to avail themselves of the rights given by the law to establish zoning regulations for their area, I can see no reason why they should not have the same right to do so. An attempt to foreclose that right would appear to be a clear invasion of the fundamental right of all citizens to enjoy equal rights and the equal protection of the law. There is certainly nothing in the law that purports to give the residents of a portion of a township any preemptive right to resort to this procedure on their own behalf, and thereby preclude residents of another part of the township from exercising the same right.

The fundamental basis underlying all zoning laws and regulations is that they enhance and protect the public health, public safety and public morals. 42 Ohio Jurisprudence, p. 807. (Citing *Pritz v. Messer*, 112 Ohio

St., 628, and many other cases.) Certainly no law could permit the residents in one area of a township by any process, to deny to the residents of an adjoining area the equal right to those benefits.

The proceedings referred to in your letter and above considered, appear to afford the only process whereby any portion of a township may secure the benefits of zoning. An examination of the entire law relative to township zoning does not disclose any provision that would make it possible to add to a zoning district once established, additional territory of the township. Section 519.12, Revised Code, Section 3180-36, G. C., contains certain provisions looking to amendments or supplements to a "zoning resolution." That section reads:

"Amendments or supplements to the zoning resolution may be made as provided by sections 519.02 to 519.11, inclusive, of the Revised Code, except that they may be made without submitting them to a vote of the electors, 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. Any person adversely affected by an order of the board of township trustees adopting, amending, or rescinding a *regulation* may appeal to the court of common pleas of the county in which such township is located on the ground that such board of township trustees failed to comply with the law in adopting, amending, rescinding, publishing, or distributing *such regulation*, or that the regulation as adopted or amended by the board of township trustees is unreasonable or unlawful, or that the revision of the regulation was unreasonable or unlawful." (Emphasis added.)

It will be noted that this section contains no suggestion of adding new territory to a district which has been zoned. On the contrary, the amendments or supplements are to the "zoning resolution" which has established certain restrictions in the zoned area. Note particularly the provision as to appeal to the court in case someone claims to be injuriously affected by "a regulation" which has been adopted, amended or rescinded by the trustees. Aside from this provision I see nothing in the

law that could even suggest a process whereby the boundaries of the original district could be affected, and it is my opinion that the section last quoted cannot be construed to affect in any way the territorial boundary of such district.

In reaching this conclusion, I am not unmindful of the fact that throughout the township zoning statutes frequent reference is made to "the township zoning commission", which could be construed as being indicative of a legislative assumption that there would be but one such zoning commission in each township. By the language actually employed in these statutes, however, the legislature has in effect forbidden the zoning of any particular area of the township until after the appointment of a commission to be composed of five members who reside in the area to be zoned. Even if Section 519.12, Revised Code, Section 3180-36, G. C., were considered as authorizing the adding of new territory to a district already zoned, such section would require that "Amendments or supplements to the zoning resolution may be made as provided by Section 519.02 to 519.11, inclusive, of the Revised Code" except as to the requirement of a vote of the electors, and would thus require that the provisions of Section 519.04 be complied with and that a commission be appointed of persons "who reside in the unincorporated area of the township to be zoned." Obviously the area "to be zoned" is not the area already zoned and it would appear clear that the zoning commission first appointed for the area which has already been zoned does not contain residents of the area now sought "to be zoned."

In conclusion and in specific answer to your question it is my opinion that where proceedings have been had under Section 519.02, Revised Code, Section 3180-26 G. C., et seq., pursuant to which a designated portion of a township has been zoned, there is nothing to prevent the zoning by the same proceedings of another portion of the same township, and successive actions may be taken as to other remaining portions of the township looking to the same end.

Respectfully,

C. WILLIAM O'NEILL

Attorney General