

OPINION NO. 810**Syllabus:**

A board of township trustees has no authority to employ special counsel to appeal a decision of a township board of zoning appeals unless the township is a party to the proceeding before the township board of zoning appeals.

To: George C. Steinemann, Erie County Pros. Atty., Sandusky, Ohio
By: William B. Saxbe, Attorney General, January 20, 1964

I have before me your request for my opinion wherein you pose the following question:

"Section 519.24, Revised Code of Ohio, provides in part that 'the board of township trustees may employ special counsel to represent it in any proceeding or to prosecute any action brought under this section.'

"I hereby request your opinion, as to whether it is lawful for a board of township trustees to employ special counsel to contest the decision of the township Zoning Board of Appeals of the same township when said township trustees do not agree with said decision."

Section 519.24, Revised Code, to which you refer, reads as follows:

"In case any building is or is proposed to be located, erected, constructed, reconstructed, enlarged, changed, maintained, or used or any land is or is proposed to be used in violation of sections 519.01 to 519.99, inclusive, of the Revised Code, or of any regulation or provision adopted by any board of township trustees under such sections, such board, the prosecuting attorney of the county, the township zoning inspector, or any adjacent or neighboring property owner who would be especially damaged by such violation, in addition to other remedies provided by law, may institute injunction, mandamus, abatement, or any other appropriate action or proceeding to prevent, enjoin, abate, or remove such unlawful location, erection, construction, reconstruction, enlargement, change, maintenance, or use. The board of township trustees may employ special counsel to repre-

sent it in any proceeding or to prosecute any actions brought under this section."

The last sentence of this section was added by amendment (127 Ohio Laws 374) effective September 17, 1957, which is entitled "Action to prevent violations of zoning regulations; special counsel." It appears clear from the legislative title and from the language of the section that it was intended to provide authorization for township trustees to engage special counsel to bring actions, or to participate in actions brought, to prevent violations of valid zoning ordinances. The actions contemplated by this section, however, would not be brought before a township board of zoning appeals because the jurisdiction of such boards, under Section 519.14, Revised Code, is limited to a consideration and disposition of appeals from administrative orders; to authorization of variances from zoning resolutions; and to the issuance of conditional zoning certificates.

There is nothing in the language of Section 519.24, *supra*, which would indicate that the authorization to appoint special counsel was for other than the limited actions mentioned in this section. Nor is there any other statute which gives specific authority to a board of township trustees to take an appeal from the decision of a township board of zoning appeals.

Appeals from decisions of a township board of zoning appeals are authorized by the general provisions of Section 2506.01, Revised Code, which provide:

"Every final order, adjudication, or decision of any officer, tribunal, authority, board, bureau, commission, department or other division of any political subdivision of the state may be reviewed by the common pleas court of the county in which the principal office of the political subdivision is located, as provided in sections 2505.01 to 2505.45, inclusive, of the Revised Code, and as such procedure is modified by sections 2506.01 to 2506.04, inclusive, of the Revised Code.

"The appeal provided in sections 2506.01 to 2506.04, inclusive, of the Revised Code is in addition to any other remedy of appeal provided by law.

"A 'final order, adjudication, or decision' does not include any order from which an appeal is granted by rule, ordinance, or statute to a higher administrative authority and a right to a hearing on such appeal is provided; any order which does not constitute a determination of the rights, duties, privileges, benefits, or legal relationships of a specified person; nor any order issued preliminary to or as a result of a criminal proceeding."

It is well settled that (in the absence of specific autho-

only parties to litigation can appeal from a judgment of a court or of an administrative tribunal. Roper v. Board of Zoning Appeals, 173 Ohio St. 168, 174 (1962). Unless, therefore, a township is a party to a proceeding before the township board of zoning appeals, a board of township trustees has no authority to take an appeal from the decision of the township board of zoning appeals. While it is unlikely for such a situation to occur, it is nevertheless possible that an administrative ruling or a proceeding before a township board of zoning appeals could affect the use of township buildings or other structures or township land. In such a situation, the township may have a right of appeal as "a specified person."

In specific answer to your question, therefore, it is my opinion and you are advised that a board of township trustees has no authority to employ special counsel to appeal a decision of a township board of zoning appeals unless the township is a party to the proceeding before the township board of zoning appeals.