

OPINION NO. 83-044

Syllabus:

Pursuant to R.C. 519.21, a township is without authority to prohibit the construction or use of a barn by a property owner where such barn will be used for keeping horses.

To: Vincent E. Gilmartin, Mahoning County Prosecuting Attorney, Youngstown, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, September 6, 1983

I have before me your opinion request in which you ask whether a property owner may place a "pole barn" on property which is located in an area which is restricted to residential use by a township zoning resolution.

In order to answer your question, it is first necessary to examine the general authority of a township to impose zoning restrictions. Since a township is a creature of statute, the township and its trustees have only those powers expressly conferred upon them by the General Assembly or necessarily implied therefrom. Trustees of New London Township v. Miner, 26 Ohio St. 452 (1875); see State ex rel. Schramm v. Ayres, 158 Ohio St. 30, 106 N.E.2d 630 (1952). Specifically concerning a township's authority to adopt zoning measures, the court in Yorkavitz v. Board of Township Trustees, 166 Ohio St. 349, 351, 142 N.E.2d 655, 656 (1957), stated: "Whatever police or zoning power townships of Ohio have is that delegated by the General Assembly, and it follows that such power is limited to that which is expressly delegated them by statute."

R.C. Chapter 519 sets forth various powers of townships in relation to zoning. R.C. 519.21, however, provides a limitation on the zoning authority of township trustees, stating, in part:

Sections 519.02 to 519.25 of the Revised Code confer no power on any board of township trustees or board of zoning appeals to prohibit the use of any land for agricultural purposes or the construction or use of buildings or structures incident to the use for agricultural purposes of the land on which such buildings or structures are located, including buildings or structures that are used primarily for vinting and selling wine and that are located on land any part of which is used for viticulture, and no zoning certificate shall be required for any such building or structure. (Emphasis added.)

R.C. 519.21 specifies that the zoning powers conferred upon a township by R.C. 519.02 to 519.25 do not include the power to prohibit the construction or use of a building or structure incident to the use for agricultural purposes of the land on which the building or structure is located. Clearly a barn falls within the category of a building or structure. Thus, if the use of the barn is incident to the use for agricultural purposes of the land on which it is located, the township is without authority to prohibit the construction or use of the barn. See generally 1959 Op. Att'y Gen. No. 363, p. 209 (syllabus, paragraph one) ("[a]ll township zoning regulations are subject to the limitations contained in [R.C. 519.21] relative to use for agricultural purposes. . .").

Whether a building is used for or is incidental to an agricultural use depends upon the facts surrounding the use of the building. As stated in 1962 Op. Att'y Gen. No. 3440, p. 949 at 952: "Any determination as to the category [sic] of use in which any land or building must fall should be made based upon the use which is made or intended to be made thereof." From information provided with your request, it is my understanding that the property owner intends to use the barn to keep horses as pets. The question then arises as to whether keeping horses as pets qualifies as an agricultural use.

R.C. 519.01 defines "agriculture," as that term is used in R.C. 519.02 to 519.25, inclusive, as including "agriculture, farming, dairying, pasturage, apiculture, horticulture, floriculture, viticulture, and animal and poultry husbandry." In Mentor Lagoons, Inc. v. Zoning Board of Appeals, 168 Ohio St. 113, 151 N.E.2d 533 (1958), the court discussed the meaning of "agricultural purposes," as that term is used in R.C. 519.21. The facts considered in Mentor Lagoons involved the keeping of horses in connection with use of the property for playing polo, clearly a recreational purpose. The court stated that keeping horses, even for recreational purposes, falls within the category of animal husbandry, and, therefore, land used for keeping horses is used for agricultural purposes. The court then concluded in paragraph three of the syllabus that, "[a] township zoning resolution may not prohibit the use of any land for agricultural purposes, including animal husbandry, which includes the keeping of horses." The situation about which you ask also involves the keeping of horses for recreational purposes and, therefore, appears to fall within the rule set forth in Mentor Lagoons.

Based on the foregoing, it is my opinion, and you are advised, that, pursuant to R.C. 519.21, a township is without authority to prohibit the construction or use of a barn by a property owner where such barn will be used for keeping horses.