

**OPINION NO. 70-097**

**Syllabus:**

Township trustees do not have the power to require a public utility or railroad to obtain a zoning certificate.

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**To: Lowell S. Petersen, Ottawa County Pros. Atty., Port Clinton, Ohio**  
**By: Paul W. Brown, Attorney General, July 30, 1970**

Your request for my opinion, as submitted to you by the Benton Township Trustees, reads in part as follows:

"A Zoning Resolution was approved by the electorate in Benton Township, Ottawa County, Ohio, November 3, 1964. An estimated 90% of the Township is zoned A-1 Agriculture.

"The Benton Township Trustees have been advised by the Office of the Prosecuting Attorney, Ottawa County, that certain sections of the existing Zoning Resolution are in need of revision to conform to the provisions of the Ohio Revised Code. One of the revisions under consideration is the requirement for a public utility or railroad to obtain a zoning certificate.\* \* \*

\* \* \* \* \* \* \* \*

"The specific question to be directed to the Ohio Attorney General is the legality of the requirement under the provisions of Section 519.21 of the Ohio Revised Code for a public utility or railroad to obtain a zoning certificate prior to the start of construction.

\* \* \* \* \* \* \* \*

Your question arises from Section 519.21, Revised Code, which states:

"Sections 519.02 to 519.25, inclusive, 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, and no zoning certificate shall be required for any such building or structure.

"Such sections confer no power on any board of township trustees or board of zoning appeals in respect to the location, erection, construction, reconstruction, change, alteration, maintenance, removal, use, or enlargement of any buildings or structures of any public utility or railroad, whether publicly or privately owned, or the use of land by any public utility or railroad, for the operation of its business."

Your request noted that the first portion of Section 519.21, *supra*, specifically states that no zoning certificate shall be required for agricultural buildings or structures. The second portion of the same section does not specifically eliminate the requirement for zoning certificates in regards public utilities and railroads.

The question is then, can township trustees, in the absence of zoning authority over public utilities and railroads, but

with no express prohibition against requiring zoning certificates, require such certificates to be submitted by public utilities and railroads?

Opinion No. 3286, Opinions of the Attorney General for 1962, stated at page 718:

"Townships possess only such powers and privileges as may be delegated to or conferred upon them by statute.\* \* \*

"It is quite clear that with the exception of the power to adopt reasonable and lawful zoning regulations, townships do not possess any legislative powers."

Opinion No. 3286, supra, cited Yorkavitz v. Board of Township Trustees of Columbia Township, 166 Ohio St. 349 (1957), which said at 350:

"The sole issue presented by this appeal is whether a provision of a zoning resolution adopted by a Board of Township Trustees is valid, where it prohibits as a nuisance the establishment, throughout the unincorporated territory of the township, of 'aviation fields, landing fields, either for private or public use, runways, airplane hangars, proving or instruction grounds.' This issue is determinable by a consideration of whether such a zoning regulation is within the scope of the police power delegated to township trustees by Chapter 519, Revised Code, entitled 'Township Zoning.'\* \* \*

"At the outset it must be noted that the townships of Ohio have no inherent or constitutionally granted police power, the power upon which zoning legislation is based. 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 to them by statute." (Emphasis added.)

In an exercise of this expressly delegated power, the zoning commission has the responsibility for preparing zoning resolutions. The zoning resolution for Benton Township apparently requires public utilities and railroads to obtain zoning certificates. This request indicates a desire on the part of the township trustees to determine the extent of their information-gathering authority in the area of land use. The township trustees have indicated in their correspondence with you, that such certificates are desired to aid in land use planning, and they said in part:

"The board of township trustees or board of zoning appeals is without power to control the use of land by such public utilities and railroads. However, the erection of buildings and structures does change and affect certain existing and future uses of land. The zoning certificate serves as written notice to the zoning commission that certain revisions must be considered in the master plan of land use. Without such notice, the zoning commission can

not adequately or fairly administer requests for land use changes within certain general areas until long term projects of the public utilities and railroads are completed. The only purpose of the zoning certificate is notice to the administrative zoning agency, for under the statute they are without power to deny its issue or control its contents as to land use."

Section 519.05, Revised Code, discusses the organization and powers of the township rural zoning commission, and states in part:

"The zoning commission shall make use of such information and counsel as is available from appropriate public officials, departments, and agencies and such officials, departments, and agencies having information, maps, and data pertinent to township zoning shall make them available for the use of the zoning commission.

"In any county where there is a county or regional planning commission, the zoning commission may request such planning commission to prepare or make available to the zoning commission a incorporated area of the township or any portion of the same."

This provision makes available a significant amount of information to the township zoning commission. To add a zoning certificate to the information-gathering machinery would give a township a power they do not now possess.

Section 519.16, Revised Code, discusses enforcement of township zoning regulations and says in part:

"For the purpose of enforcing the zoning regulations, the board of township trustees may provide for a system of zoning certificates.  
\* \* \*"

Section 519.17, Revised Code, concerned with the requirement for obtaining zoning certificates, reads as follows:

"No person shall locate, erect, construct, reconstruct, enlarge, or structurally alter any building or structure within the territory included in a zoning resolution without obtaining a zoning certificate, if required under section 519.16 of the Revised Code, and no such zoning certificate shall be issued unless the plans for the proposed building or structure fully comply with the zoning regulations then in effect."

A reading of these two sections reveals that zoning certificates are to be used to aid in enforcing township regulations, and no certificate is to be issued unless the proposed structure meets applicable zoning regulations. Section 519.21, supra, has stated that no power is conferred on township trustees to regulate the construction or use of structures belonging to public utilities or railroads, and although a zoning certificate might be valuable to the township as an information-gathering tool, there is no power to require such a certificate.

It is therefore my opinion, and you are hereby advised, that township trustees do not have the power to require a public utility or railroad to obtain a zoning certificate.