

OPINION NO. 89-067**Syllabus:**

1. Except in those situations governed by R.C. 519.21(B), property used for the keeping of horses at a horse training center is use for agricultural purposes within the meaning of R.C. 519.21(A), and, as such, is not subject to township zoning regulations. (1969 Op. Att'y Gen. No. 69-078, overruled.)
2. Except as provided in R.C. 519.21(B), where the use of a building or structure located on property used for agricultural purposes is primarily and directly related to the property's use for agricultural purposes, R.C. 519.21(A) exempts such building or structure from the zoning certificate requirements of R.C. 519.17.

To: Lynn C. Slaby, Summit County Prosecuting Attorney, Akron, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, September 6, 1989

I have before me your opinion request concerning the applicability of township zoning regulations to certain property which is intended to be used for a horse training center. As stated in your opinion request:

This would involve 94 acres that are proposed to be developed to include a 3 quarter mile exercise track, 4 horse barns with 200 stalls for horses in each, a dormitory to house the grooms, a utility building for equipment and feeding, a building for an indoor pool, and an aqua ciser for the horses. In addition, there would be a building for a security guard and a veterinarian.

One of your assistants has also indicated that the indoor pool and aqua ciser are to be used for therapy and care of the horses. Based on these facts you have asked two questions which I have restated as follows:

1. Does the use of property for a horse training center constitute a use for agricultural purposes, as that term is used in R.C. Chapter 519?
2. Where a property owner in an area zoned for residential use seeks to construct a building or other structure on property which will be used for a horse training center, must he first obtain a zoning certificate?

The general authority of townships to impose zoning regulations is set forth in various provisions within R.C. Chapter 519. As stated in *Yorkavitz v. Board of Township Trustees*, 166 Ohio St. 349, 351, 142 N.E.2d 655, 656 (1957): "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." A township's authority with respect to zoning is expressly limited by R.C. 519.21, which states in pertinent part:

(A) Except as otherwise provided in division (B) of this section,¹ [R.C. 519.02-.25] confer no power on any township zoning commission, 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. (Footnote added.)

R.C. 519.21(A) thus specifies that a township's zoning authority, with the exception set forth in R.C. 519.21(B), does not extend to the prohibition of the use of land for agricultural purposes. Further, a township is without authority to use its zoning power, except as provided in R.C. 519.21(B), to prohibit the construction or use of buildings or structures incident to the use for agricultural purposes of the land where the buildings or structures are located. 1959 Op. Att'y Gen. No. 363, p. 209.

In the situation you describe, the property will be used for a horse training center. Several buildings will be located on the property to be used for various purposes related to the care of the horses. The questions then arise as to whether the use of property for a horse training center qualifies as an agricultural purpose under R.C. 519.21 and if so, whether the buildings or structures located on the property are incident to the use of the property for that agricultural purpose.

Pursuant to R.C. 519.01, "agriculture" is defined, for purposes of R.C. 519.02-.25, as including, among other things, animal husbandry. In 1983 Op. Att'y Gen. No. 83-044, I concluded that a township had no authority to prohibit the construction or use of a barn for keeping horses, based upon the following analysis:

In *Mentor Lagoons, Inc. v. Zoning Board of Appeals*, 158 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

¹ R.C. 519.21(B) states in pertinent part: "Division (B) of this section confers no power on any township zoning commission, board of township trustees, or board of zoning appeals to regulate agriculture, buildings or structures, and dairying and animal and poultry husbandry on lots greater than five acres." Since your opinion request refers to a piece of property which is 94 acres, I will assume that the property is on a lot greater than five acres for purposes of R.C. 519.21(B).

resolution may not prohibit the use of any land for agricultural purposes, including animal husbandry, which includes the keeping of horses."

Op. No. 83-044 at 2-169. In the *Mentor Lagoons* case, the court did not base its conclusion on the purpose for which the horses were kept on the property, but determined that the keeping of horses in itself constitutes animal husbandry, which is expressly included within the definition of agriculture as set forth in R.C. 519.01.

In the situation you describe, the horses will be kept on the property, not for recreational purposes as was the situation in *Mentor Lagoons*, but for training purposes. As discussed above, however, it does not appear that the purpose for which horses are kept is determinative of whether the land on which they are kept is used for agricultural purposes. See *Harris v. Rootstown Township Zoning Board of Appeals*, 44 Ohio St. 2d 144, 338 N.E.2d 763 (1975) (finding that the breeding, raising and care of dogs constitutes animal husbandry, as that term is used in R.C. 519.01, and thus a building used as a kennel for dogs is a building used for agricultural purposes within the meaning of R.C. 519.21);² *Davidson v. Abele*, 2 Ohio App. 2d 106, 206 N.E.2d 583 (Butler County 1965) (concluding that the term "agriculture," as used in R.C. Chapter 303, concerning county rural zoning, includes animal husbandry which term encompasses the operation of a mink farm or ranch).³ I must conclude, therefore, that the term animal husbandry encompasses the keeping of horses at a horse training center, and that such use of the property, therefore, constitutes use for agricultural purposes within the meaning of R.C. 519.21.

Your second question concerns whether a zoning certificate will be needed before proceeding with the construction of the buildings on the subject property. I begin by noting that R.C. 519.16 empowers the board of township trustees, for the purpose of enforcing the zoning regulations, to provide for a system of zoning certificates. Concerning the necessity of obtaining a zoning certificate, R.C. 519.17 states:

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 [R.C. 519.16], 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.

R.C. 519.21, however, establishes an exception to the zoning certificate requirements of R.C. 519.17. R.C. 519.21(A) expressly states that no zoning certificate shall be required for any building or structure incident to the use for agricultural purposes of the land on which it is located. Thus, if the buildings or structures to be used on the property are "incident to" the land's use for agricultural purposes, no zoning certificate may be required.

² In 1969 Op. Att'y Gen. 69-078, one of my predecessors concluded that the raising and care of dogs does not constitute animal husbandry and thus cannot be considered an agricultural purpose within the meaning of R.C. 519.01. In light of the Supreme Court's subsequent decision in *Harris v. Rootstown Township Zoning Board of Appeals*, 44 Ohio St. 2d 144, 338 N.E.2d 763 (1975), I hereby overrule Op. No. 69-078.

³ In 1954 Op. Att'y Gen. No. 3607, p. 105, one of my predecessors concluded in syllabus, paragraph two: "The provision of [R.C. 519.21], forbidding the zoning of any land in a township, so as to prohibit its use for agricultural purposes, does not prevent the adoption of zoning regulations limiting the use of such land for raising minks." Although the decision in *Davidson v. Abele*, 2 Ohio App. 2d 106, 206 N.E.2d 583 (Butler County 1965), interprets the phrase "animal husbandry," as used in a different chapter of the Revised Code, i.e. R.C. Chapter 303, as including the operation of a mink ranch or farm, it appears that the continued validity of 1954 Op. No. 3607 (syllabus, paragraph two) is doubtful.

In *State v. Huffman*, 20 Ohio App. 2d 263, 253 N.E.2d 812 (Hancock County 1969), the court stated in syllabus, paragraph four: "The question whether a particular structure is one whose use is incident to an agricultural use is generally an issue of fact to be determined by the trier of the facts." In that case, the court established the following test as to whether a structure is incident to the agricultural use of the property on which it is located:

structure-use must be "directly and immediately" related to agricultural use. It must be either "usually or naturally and inseparably" dependent upon agricultural use....Whether it be a usual arrangement would be a question of fact dependent on evidence as to the custom and use in a particular community. Whether the connection is "direct and immediate" or indirect and secondary depends on the total situation as a matter of degree as involved.⁴ (Footnote added.)

20 Ohio App. 2d at 269-70, 253 N.E.2d at 817. Thus, the test set forth in *Huffman* appears to require that the use of the structure be primarily and directly related to the use of the property for agricultural purposes. See, e.g., 1967 Op. Att'y Gen. No. 67-049 (syllabus) ("[h]arvesting is clearly a part of the agricultural use of land and if a farmer is unable to harvest his crop without providing housing for the migrant workers who are required for the harvest, then those buildings are incident to the agricultural use of land under [R.C. 519.21]").

According to the information provided by your office, the structures about which you ask are to be used for purposes related to the care and keeping of the horses at the facility. Based upon the court's analysis in *Mentor Lagoons*, I do not see that a trier of fact could, in the situation you describe, conclude other than that the structures located on the premises of the horse training center are primarily and directly related to the property's use for agricultural purposes, i.e., the keeping of horses and that R.C. 519.21(A), therefore, exempts such structures from the zoning certificate requirements of R.C. 519.17.

Based on the foregoing, it is my opinion, and you are hereby advised, that:

1. Except in those situations governed by R.C. 519.21(B), property used for the keeping of horses at a horse training center is use for agricultural purposes within the meaning of R.C. 519.21(A), and, as such, is not subject to township zoning regulations. (1969 Op. Att'y Gen. No. 69-078, overruled.)
2. Except as provided in R.C. 519.21(B), where the use of a building or structure located on property used for agricultural purposes is primarily and directly related to the property's use for agricultural purposes, R.C. 519.21(A) exempts such building or structure from the zoning certificate requirements of R.C. 519.17.

⁴ Prior to the decision in *State v. Huffman*, 20 Ohio App. 2d 263, 253 N.E.2d 812 (Hancock County 1969), one of my predecessors concluded in 1962 Op. Att'y Gen. No. 3440, p. 949, syllabus, paragraph one, that: "A structure used only as a dwelling house for a person engaged in agriculture is not a structure incident to an agricultural use of land so as to be exempt by the terms of [R.C. 519.21] from the provisions of a zoning regulation enacted pursuant to [R.C. Chapter 519]." Since the decision in *Huffman*, however, it is clear that a determination as to whether the use of a building or structure is incident to the use for agricultural purposes of the property on which it is located depends on the totality of circumstances involved.