

## OPINION NO. 84-029

**Syllabus:**

A board of township trustees may not enact a zoning resolution that requires an immediate termination of a nonconforming use upon the sale, lease, devise, bequest or any other transfer of land, since R.C. 519.19 permits the continuation of a nonconforming use unless such nonconforming use is voluntarily discontinued for two years or more.

**To: Roger L. Kline, Pickaway County Prosecuting Attorney, Circleville, Ohio**  
**By: Anthony J. Celebrezze, Jr., Attorney General, May 11, 1984**

I have before me your request for my opinion concerning a township zoning resolution and its status in relation to R.C. 519.19. It is my understanding that the township zoning resolution requires the discontinuation of nonconforming uses immediately upon the sale, lease, devise, bequest or any other transfer of the land. R.C. 519.19, on the other hand, permits a nonconforming use to be continued unless it is voluntarily discontinued for at least two years.<sup>1</sup> Your questions concern the validity of a township zoning resolution that is more restrictive than a related statutory requirement.

R.C. Chapter 519 grants to the board of township trustees, as a police power, the authority to adopt and enforce zoning regulations for the township. Yorkavitz et al. v. Board of Township Trustees of Columbia Township, 166 Ohio St. 349, 142 N.E.2d 655 (1957). Such authority, however, is limited to only that granted by statute, because, although zoning is regarded as a police power, a township has no inherent or constitutional police powers. Yorkavitz, 166 Ohio St. at 351, 142 N.E.2d at 656; Crist v. True, 39 Ohio App. 2d 11, 314 N.E.2d 186 (Clermont County 1973); Clifton Hills Realty Company v. Cincinnati, 60 Ohio App. 443, 21 N.E.2d 993 (Hamilton County 1938). A zoning resolution that conflicts with a state statute is, therefore, necessarily void. See generally Eastlake v. Board of Building Standards, 66 Ohio St. 2d 363, 422 N.E.2d 598 (1981); Sun Oil Co. v. Upper Arlington, 55 Ohio App. 2d 27, 379 N.E.2d 266 (Franklin County 1977); Crist v. True; Fox v. Johnson, 28 Ohio App. 2d 175, 275 N.E.2d 637 (Mahoning County 1971); 1964 Op. Att'y Gen. No. 1178.

The test to determine whether a township zoning resolution is in conflict with a state statute is if the resolution or ordinance permits or licenses that which the state statute forbids or prohibits, or vice-versa. This test, often used by the courts, was originally set forth in Village of Struthers v. Sokol, 108 Ohio St. 263, 140 N.E. 519 (1923) (local police, sanitary and other similar regulations valid so long as such regulations do not conflict with general laws). Relying on this test, courts have held township and municipal zoning resolutions void, if the resolution conflicts with a statutory provision. See, e.g., Crist v. True (resolution providing for closed zoning meetings is in conflict with R.C. 519.12); City of Lyndhurst v. Compola d.b.a.

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<sup>1</sup> R.C. 519.19 states:

The lawful use of any dwelling, building, or structure and of any land or premises, as existing and lawful at the time of enactment of a zoning resolution or amendment thereto, may be continued, although such use does not conform with such resolution or amendment, but if any such nonconforming use is voluntarily discontinued for two years or more, any future use of said land shall be in conformity with sections 519.02 to 519.25, inclusive, of the Revised Code. The board of township trustees shall provide in any zoning resolution for the completion, restoration, reconstruction, extension, or substitution of nonconforming uses upon such reasonable terms as are set forth in the zoning resolution.

Tasty Pizza Shop, 112 Ohio App. 483, 169 N.E.2d 558 (Cuyahoga County 1960) (ordinance limiting the area where food and alcohol may be served is in conflict with R.C. Title 43); Yorkavitz, et al. v. Board of Township Trustees of Columbia Township (resolution limiting the development of township airports is in conflict with R.C. Chapter 4561 promoting the development of airports).

Sun Oil Co. of Pa. v. City of Upper Arlington is directly applicable to your inquiry. The issue before the court was whether the municipality could require the removal of preexisting signs, which otherwise constituted valid nonconforming uses, solely because the signs had been amortized for tax purposes. The court held such requirement invalid since it conflicted with R.C. 713.15, which contains identical language to that contained in R.C. 519.19. Applying the Sokol test, the Court found:

It is unnecessary, however, to determine herein whether or not a police regulation may eliminate preexisting and otherwise valid, nonconforming uses by amortization of such use, inasmuch as, with respect to zoning ordinances, the General Assembly has legislatively determined to the contrary by the enactment of R.C. 713.15. . . .

Clearly the Upper Arlington ordinance for amortization of nonconforming uses is in conflict with R.C. 713.15, which specifically allows preexisting nonconforming uses to be continued until voluntarily discontinued for two years or more.

55 Ohio App. 2d at 35-36, 379 N.E.2d at 271-272.

In examining the question presented by your request, it seems apparent that a township resolution providing for the immediate termination of a nonconforming use in the event the property is transferred in any manner conflicts with R.C. 519.19, which expressly permits the continuation of nonconforming uses, unless such nonconforming use is voluntarily discontinued for two years or more. The local resolution is forbidding that which the statute permits, namely the continuation of a nonconforming use absent a voluntary discontinuation of use for a period of at least two years. As noted by one of my predecessors in 1969 Op. Att'y Gen. No. 69-027, R.C. 519.19 provides "just one basis for termination of a nonconforming use, namely; when it has been discontinued voluntarily for two years or more." Clearly, the township resolution is providing another method. Thus, since the resolution forbids that which R.C. 519.19 permits, the resolution must fail.

Therefore, it is my opinion, and you are hereby advised, that a board of township trustees may not enact a zoning resolution that requires an immediate termination of a nonconforming use upon the sale, lease, devise, bequest or any other transfer of land, since R.C. 519.19 permits the continuation of a nonconforming use unless such nonconforming use is voluntarily discontinued for two years or more.