

**OPINION NO. 80-058****Syllabus:**

R.C. 303.21 exempts from the zoning authority granted to counties pursuant to R.C. Chapter 303 all land used for agricultural purposes, and the construction or use of any building incident thereto and located on land used for agricultural purposes. Therefore, the words "any land for agricultural purposes" in R.C. 303.21 cannot be restricted to mean only non-regulated land.

**To: L. Craig Hallows, Miami County Pros. Atty., Troy, Ohio**  
**By: William J. Brown, Attorney General, September 30, 1980**

I have before me your request for an opinion which reads as follows:

Pursuant to the Ohio Revised Code Section 303.02, the County Commissioners have adopted a zoning regulation which establishes a yard area and set-back requirement for A-1 Agricultural Districts. Under such a regulation, may an agricultural structure, exempt from zoning regulations under ORC 303.21, be built in a location which encroaches upon the yard area or set-back requirements of a non-exempt residence[?] In short, does the language "any land" on line four (4) of ORC Section 303.21 mean "all land" or "non-regulated land?"

It is fundamental that counties have no power of their own to regulate land use. The authority to zone arises from the police power of the state, under which the General Assembly may enact laws in furtherance of public safety, health, and general welfare. Pritz v. Messer, 112 Ohio St. 628, 149 N.E. 30 (1925); East Fairfield Coal Co. v. Miller, 71 Ohio L. Abs. 490 (C.P. Mahoning County 1955).

The General Assembly has delegated zoning power to counties under R.C. Chapter 303. R.C. 303.02 provides that, for the purpose of "promoting the public health, safety, and morals," a board of county commissioners may regulate the size, location, and use of buildings and land in the unincorporated territory of the county. A limitation on this power is found in R.C. 303.21, which states in pertinent part:

Sections 303.01 to 303.25 of the Revised Code do not confer any power on any board of county commissioners 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. (Emphasis added.)

The remaining paragraphs of R.C. 303.21 similarly prohibit the regulation of any public utility, railroad, oil and gas well drilling, or the sale of alcohol in business districts.

In Motor Cargo, Inc. v. Board of Township Trustees, 52 Ohio Op. 257, 117 N.E. 2d 224 (C.P. Summit County 1953), the court was called upon to interpret R.C. 519.21, a provision nearly identical to R.C. 303.21, but applicable to townships. The question presented was whether the language limiting the power of a township to regulate "any public utility" could be construed to mean only public utilities having the power of eminent domain. The court utilized the plain meaning test of statutory construction, as enunciated in Wachendorf v. Shaver, 149 Ohio St. 231, 78 N.E. 2d 370 (1948), which provides that if legislative intent is clearly expressed in the statute itself, the statute may not be restricted, qualified, narrowed, enlarged or abridged. Under this test, the court in Motor Cargo concluded that the use of the words "any public utility" in R.C. 519.21 "excludes selection or distinction," and declares the exemption in the statute as a whole without limitation. Motor Cargo, 52 Ohio Op. at 259, 117 N.E. 2d at 227.

So too, the use of the phrase "any land" in R.C. 303.21 exempts all land used for agricultural purposes from the power to zone. The plain meaning of the statute is to exclude from zoning regulations all buildings located on land used for agricultural purposes, and constructed or used as an incident to such use. As such, a structure constructed for agricultural purposes, which encroaches upon the yard area of a non-exempt residence, is not subject to zoning regulations if the land upon which it is located is used for agricultural purposes, and no zoning certificate may be required for such a building. Cf. 1961 Op. Att'y Gen. No. 2280, p. 307, 308 (pursuant to R.C. 519.21, the use of any land for agricultural purposes in a township "cannot be regulated away by a zoning resolution"). A determination of whether the land on which the building is located is used for agricultural purposes will, of course, depend upon the facts of each case. See State v. Huffman, 20 Ohio App. 2d 263, 253 N.E. 2d 812 (Ct. App. Hancock County 1969).

Accordingly, it is my opinion, and you are advised, that R.C. 303.21 exempts from the zoning authority granted to counties pursuant to R.C. Chapter 303 all land used for agricultural purposes, and the construction or use of any building incident thereto and located on land used for agricultural purposes. Therefore, the words "any land for agricultural purposes" in R.C. 303.21 cannot be restricted to mean only non-regulated land.