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ZONING — TOWNSHIP — REGULATIONS PROHIBITING TRAILER PARKS IN TOWNSHIP—PUBLIC HEALTH COUNCIL WITHOUT AUTHORITY TO AUTHORIZE LOCATION OF TRAILER PARK—§§3733.01 to 3733.06 R.C.

SYLLABUS:

When the trustees of a township have duly adopted zoning regulations forbidding the operation of a house trailer park in the township, which regulations are in force, the public health council and the board of health of the district are without authority under Sections 3733.01 to 3733.06, inclusive, Revised Code, to authorize the location of a trailer park or camp in said township.

Columbus, Ohio, May 15, 1958

Hon. Edward R. Ostrander, Prosecuting Attorney
Lake County, Painesville, Ohio

Dear Sir:

I have before me your request for my opinion reading as follows:

“Can the State Board of Health and the local Board of Health lawfully grant licenses to applicants to operate a trailer park in township where zoning regulations prohibit trailer parks from operating, and where the applicant has not proceeded to install the trailer park until after passage of the zoning resolution?”

“Must the State Board of Health and the local Board of Health take cognizance of township zoning regulations prohibiting trailer parks in approving plans and issuing licenses for proposed trailer parks.”

“I have been requested to obtain this opinion by the Board of Trustees of Madison Township, Lake County, Ohio.”

Section 519.01, *et seq.*, Revised Code, authorizes the board of township trustees to regulate the *location*, size and use of buildings and *lands within the township* or any designated area thereof, and I assume that the township regulation to which you refer has been duly adopted pursuant to the procedure set out in those statutes.

Under the provisions of Sections 3733.01 to 3733.05, inclusive, Revised Code, as enacted in 1953, the public health council of the state is authorized

to make regulations of general application throughout the state concerning house trailer parks, and to issue licenses therefor.

Section 3733.01, Revised Code, defines "house trailer park".

Section 3733.02, Revised Code, reads as follows:

"The public health council, subject to sections 119.01 to 119.13, inclusive, of the Revised Code, may make *regulations of general application throughout the state* governing the location, layout, construction, drainage, sanitation, safety, and operation of house trailer parks." (Emphasis added)

Section 3733.03, Revised Code, reads as follows:

"On or after the first day of December, but before the first day of January of the next year, every person, firm, or corporation which intends to operate a house trailer park shall procure a license to operate such park for said year from the board of health of the district in which the park is located. No such park shall be maintained or operated in this state after January 1, 1952 without a license. A person, firm, or corporation which has received a license, upon the sale or disposition of said park may, upon consent of the board, have the license transferred."

Section 3733.04, Revised Code, provides a schedule of fees which may be charged for issuance of licenses.

Section 37733.05, Revised Code, authorizes the cancellation of any license for failure of the licensee to comply with the aforesaid regulations.

Your letter suggests a possible conflict between the provision of the township zoning regulation which prohibits house trailer parks being located or operated within the township, and the action of the health council which would license and permit such trailer parks in the territory of the township, and fix its location.

The question of such conflict was raised in the case of *Stary v. Brooklyn*, 162 Ohio St., 120. In that case an ordinance of the City of Brooklyn prohibited a house trailer from remaining in a trailer camp for more than sixty days and, if withdrawn therefrom, from returning to any trailer camp within the city within ninety days thereafter. The action in that case was brought by the occupant of a trailer camp, asking for a declaratory judgment finding the ordinance to be unconstitutional. The court held:

“Sections 1235-1 to 1235-5, General Code, (3733.01 et seq, R.C.) constitute laws of general application, but, by the enactment of those statutes, the General Assembly of Ohio did not pre-empt the field of legislation with respect to regulation of trailer camps or trailer parks so as to bar the enactment of municipal legislation on the same subject.”

This holding was discussed and applied by my immediate predecessor in Opinion No. 4582, Opinions of the Attorney General, for 1954, page 579, wherein it was held, as shown by the syllabus:

“A regulation of the public health council promulgated pursuant to the authority of Chapter 3733, Revised Code, Sections 1235-5, General Code, which purports to guarantee the right of occupancy of a trailer in a trailer camp or park for a period of time in excess of that permitted by a municipal ordinance does not render unenforceable the limitations and restrictions as to occupancy established by such ordinance.”

Both of these holdings emphasize the proposition that the state in enacting Section 3733.01, *et seq.*, *supra*, did not intend to “pre-empt the field” of legislation with respect to regulation of trailer parks, but both were rendered with reference to the effect of these statutes in the light of the home rule powers of a municipal corporation. They are therefore persuasive but not conclusive on the question which you present.

However, in the case of *Davis v. McPherson*, 58 Ohio Opinions, 253, the Court of Appeals of Summit County had before it a situation which appears to be substantially identical with that presented in your letter. There the township trustees of Bath Township, Summit County, had adopted a zoning regulation which prohibited the establishment of any trailer camp in any part of the territory zoned. Thereafter, while such zoning regulation was in full force and effect, a permit for the operation of such trailer camp within Bath Township was issued by the county department of health and approved by the state department of health, pursuant to regulations which had been adopted by the public health council. The court in the course of the opinion says:

“The second question propounded by appellants may be thus paraphrased: Has the state, under the provisions of R.C. Section 3733.01, et seq., and regulations 267 and 268 of the Public Health Council, enacted in pursuance of said code sections, pre-empted the field of legislation with respect to the regulation of trailer parks.”

The court held, as shown by the second branch of the headnotes:

“Under the provisions of R.C. Section 3733.01, et seq., and regulations of the public health council enacted in pursuance of the code sections, the state has not pre-empted the field of legislation of trailer parks.”

The opinion concludes with the following statement:

“We hold that the Bath Township zoning resolution is reasonably comprehensive in its application, and has a reasonable relation to the preservation of the public health, safety, and morals; that it does not conflict with general laws, and hence is a valid, enforceable enactment; and that the enforcement of the provisions of said resolution against the defendants does not contravene state or federal constitutional provisions.”

This case was taken to the Supreme Court which, on November 23, 1955, overruled a motion to certify. Accordingly, I would regard it as a complete and positive answer to the question which you have presented, except for the possible effect of the enactment in 1955, of Section 3733.06, Revised Code, which relates to the licenses issued by the public health council, and which reads as follows:

“Upon a license being issued under sections 3733.03 to 3733.05, inclusive, of the Revised Code, any park operator shall have the right to rent or use each trailer lot or space for the parking of a house trailer or trailers to be used for human habitation without interruption for any period coextensive with any license or consecutive licenses issued under sections 3733.03 to 3733.05, inclusive, of the Revised Code.”

It is interesting to note that this section was enacted June 1, 1955, after the decision in the *Brooklyn* case, *supra*, and Opinion No. 4582, *supra*, and a few days before the decision of the court of appeals in *Davis v. McPherson*, *supra*, affirming the decision of the lower court.

The question arises, what was the purpose of the legislature in enacting this seemingly useless new section. Was it an attempt to do what the courts had said it had not theretofore intended to do, viz, to “pre-empt the field” of legislation in reference to house trailers? If that was its intention was it successful?

Bearing in mind that the public health council is merely an arm of the state department of health, whose sole function is to conserve the public health, I cannot ascribe to the legislature an intention to make of

the health council a zoning board, with power to override the authority of those agencies to which the legislature had long before given explicit authority to enact zoning regulations.

To authorize this public health agency to confer, by the grant of a license, the privilege of planting a crowded, unsightly and sometimes unsanitary conglomeration of more or less temporary housing quarters, in a portion of a municipality or township which had been carefully zoned for permanent residences only, would appear to be a gross betrayal of a public trust.

In my opinion the power given by Section 3733.02, *supra*, to “make regulations of general application throughout the state governing the location, layout, construction, drainage, sanitation, safety and operation of house trailer parks” was intended to preserve and conserve the health and welfare of the occupants of these house trailers and of the residents of the surrounding community by the adoption of such general regulations, and was never designed to permit the local health board to invade a territory which had been lawfully restricted against such house trailer parks, and to designate a spot where, merely by reason of a license to operate, the trailer park might be placed and, during the period of the license, permitted to remain, regardless of the zoning prohibition.

It is therefore my opinion that the enactment of said Section 3733.06, Revised Code, while it may have been intended to protect a licensee against *unlawful* interference with the enjoyment of his grant, did not have the effect of authorizing the district board of health to grant a license to locate and operate a house trailer park in a district from which such trailer parks had been barred either by municipal ordinance or township zoning regulation.

It is accordingly my opinion and you are advised that when the trustees of a township have duly adopted zoning regulations forbidding the operation of a house trailer park in the township, which regulations are in force, the public health council and the board of health of the district are without authority under Sections 3733.01 to 3733.06, inclusive, Revised Code, to authorize the location of a trailer park or camp in said township.

Respectfully,
WILLIAM SAXBE
Attorney General