

OPINION NO. 72-033

Syllabus:

1. The State has pre-empted the regulation of house trailers and trailer parks.

2. Under Section 3733.07, Revised Code, the fees charged by the State for the operation of such trailer parks are in lieu of all other license and inspection fees.

3. A board of trustees of a township may not, by means of a zoning ordinance, impose a further tax upon the operation of such a trailer park.

To: Bernard W. Freeman, Huron County Pros. Atty., Norwalk, Ohio
By: William J. Brown, Attorney General, April 21, 1972

Your request for my opinion reads, in pertinent part, as follows:

"We have a township that has township zoning which requires a permit for any dwelling, including house trailers, and has various fees. The fee schedule in part reads as follows:

"'Fees: Trailers, Private Carages & House additions.....\$5.00'.

"The township zoning inspector has had his right to collect said fees questioned by the owner of a trailer park who maintains that because he is licensed by the State he is not required to pay for this zoning permit for each trailer put in his trailer park.

"We are aware of the case of Holand v. Sharonville, 4 App. (2nd), page 7, and apparently there is another case which has ruled that municipalities cannot impose an occupation or excise tax as to licensing of individual trailers and trailer parks. My question is this:

"Is a township in its zoning ordinance permitted to require a zoning permit for each trailer placed in a trailer park and to charge a fee therefor?"

In Chapter 4503, Revised Code, the General Assembly has provided for the levy of an annual State license tax upon the operation of various types of automobile trailers on the public highways of the State. The license tax imposed upon house trailers and travel trailers appears in Section 4503.04 (C), Revised Code. In addition, Section 4503.06, Revised Code, imposes a use tax upon house trailers, and the operators of house trailer parks are required by Section 4503.062, Revised Code, to keep a detailed register of all such trailers which make use of the park. The terms "house trailer" and "travel trailer" are defined in Section 4501.01 (I) and (K), Revised Code, as follows:

"(I) 'House trailer' means any self-propelled and nonself-propelled vehicle so designed, constructed, reconstructed, or added to by means of accessories in such manner as will permit the use and occupancy thereof for human habitation, when connected to indicated utilities, whether resting on wheels, jacks, or other temporary foundation and used or so constructed as to permit its being used as a conveyance upon the public streets or highways.

* * * * *

"(K) 'Travel trailer' means a vehicular portable structure built on a chassis and not exceeding a gross weight of four thousand five hundred pounds when factory equipped for the road or an overall length of thirty feet and designed to be used as a temporary dwelling for travel, recreational, and vacation uses."

Furthermore, Chapter 3733, Revised Code, provides for extensive regulation of automobile trailer parks by State agencies. Section 3733.01, Revised Code, sets forth specific definitions of sites containing certain accommodations which shall be considered a "house trailer park", a "travel trailer park", or a "travel trailer overnight port", and it incorporates the definitions of "house trailer" and "travel trailer" already prescribed by Section 4501.01, supra.

Section 3733.02, Revised Code, provides for regulation of such trailer parks and ports by the Public Health Council. (See Sections 3701.33 to 3701.35, Revised Code.) The provisions of Section 3733.02, supra, read as follows:

"(A) 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 and travel trailer parks.

"(B) 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, drainage, operation of sewage disposal stations, and sanitation of travel trailer ports."

Section 3733.03, Revised Code, provides that the operator of any such park or port must obtain an annual license for the operation thereof from the board of health of the district; and Section 3733.04, Revised Code, which prescribes the amounts of the annual license fees, reads in pertinent part as follows:

"The board of health of the district in which a house trailer park or travel trailer park or overnight port is located may charge an annual fee for the right to operate such park or port. Such fee includes the cost of licensing and all inspections and is as follows:

"* * * * *"

Under Section 3733.05, Revised Code, the district board of health may refuse or revoke such a license for failure to comply with the Public Health Council's regulations; but Section 3733.06, Revised Code, defines the rights of licensed operators in the following terms:

"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."

Finally, Section 3733.07, Revised Code, provides that the fees assessed by the district board of health shall be in lieu of all other license and inspection fees. That Section reads as follows:

"Fees authorized or charged at the rate provided under section 3733.04 of the Revised Code shall be in lieu of all license and inspection fees on or with respect to the operation or ownership of trailer parks or ports within this state."

In the light of the foregoing, it is evident that the General Assembly intended that there be a comprehensive system of State taxation and regulation of house trailers and trailer parks. The question is whether the State has pre-empted this field of regulation; or whether a township may still, by enacting a so-called zoning ordinance, collect a fee from the owner of a trailer park for each house trailer occupying a space therein.

In 1954, under an earlier version of Chapter 3733, supra, the Supreme Court held that the State had not pre-empted the regulation of trailer parks, and that a municipality retained some power of regulation and might require the operator to pay a license fee. Stary v. Brooklyn, 162 Ohio St. 120 (1954). The following year, however, the General Assembly added Sections 3733.06 and 3733.07, supra, to the previously existing Sections of Chapter 3733, supra. Section 3733.06, supra, gives the operator of a trailer park the right to rent each space in the park for occupancy by a house trailer for the duration of his State license. Section 3733.07, supra, provides that the State license fee shall be in lieu of all

other license or inspection fees. Upon consideration of a later case involving municipal regulation of a trailer park, after the enactment of the two new Sections, the Supreme Court said, in Anderson v. Brown, 13 Ohio St. 2d 53, 54 (1968):

"A license for the operation of a house trailer park issued by the district board of health pursuant to Section 3733.06, Revised Code, gives the person to whom it is issued the right to operate such a park, and a municipal ordinance which prohibits the operation of such a park within the limits of the municipality without a municipal license, which is obtainable only upon paying a fee, is in conflict with Section 3733.06, Revised Code. * * *"

And in Noland v. City of Sharonville, 4 Ohio App. 2d 7 (1964), the Court of Appeals for the First District said (at page 9):

"The quoted sections [Sections 3733.06 and 3733.07], contrary to the facts of the Stary case * * * do purport to vest in the state the sole right to assess a license fee and thereby prohibit the municipality from doing so.

"The state having pre-empted the field of taxation as to the licensing of individual house trailers and trailer camps, the city cannot impose an occupation or excise tax on the same privilege."

See also Auxter v. Toledo, 173 Ohio St. 444 (1962), and State, ex rel. McElroy v. Akron, 173 Ohio St. 189 (1962).

It must be concluded, therefore, that the State has pre-empted the regulation of house trailers and duly established trailer parks, and that a township may not impose a license tax in addition to the statutory tax collected by the State. It is true that the board of trustees of the township may, under its authority to adopt zoning regulations, control the original establishment of a trailer park. Section 519.02, Revised Code; Trustees of Bath Township v. McPherson, 58 Ohio Op. 253 (1955); Brunswick Township v. Riddell, 58 Ohio Op. 380 (1955); Opinion No. 2111, Opinions of the Attorney General for 1958; cf. also, Opinion No. 72-020, Opinions of the Attorney General for 1972. But it may not, under the guise of a zoning fee, collect an excise tax upon the operation of a duly established trailer park in addition to that already assessed against the operator by the State.

In specific answer to your question it is, therefore, my opinion, and you are so advised, that:

1. The State has pre-empted the regulation of house trailers and trailer parks.
2. Under Section 3733.07, Revised Code, the fees charged by the State for the operation of such trailer parks are in lieu of all other license and inspection fees.
3. A board of trustees of a township may not, by means of a

zoning ordinance, impose a further tax upon the operation of such a trailer park.