

OPINION NO. 97-042**Syllabus:**

1. A recreational vehicle, as defined at R.C. 4501.01(Q), that is altered in such a way that it qualifies as a fixture under R.C. 5701.02(C) loses its status as personal property and is classified as real property pursuant to R.C. 5701.02(A), regardless of where that recreational vehicle is located.
2. A recreational vehicle becomes a fixture taxable as real property when it is attached to the real property in such a manner that, (1) when it is removed, it must be reconstructed in order to function as a motor vehicle, or (2) its removal will cause serious injury to the real property, inclusive of any buildings and structures thereon. In situations where the recreational vehicle does not meet one of these two criteria, it will be necessary to consider the physical mode of attachment in conjunction with other objective evidence in order to determine whether the owner intends the recreational vehicle to remain attached to the real property permanently.
3. The determination of whether a recreational vehicle has become a fixture is a question of fact to be determined in the first instance by the county auditor.
4. A recreational vehicle that is not taxable as real property is subject to the

manufactured home tax of R.C. 4503.06 only when the recreational vehicle is a travel trailer, as defined at R.C. 4501.01(Q)(1), that has a situs in one place for more than thirty days, is connected to existing utilities, and is not excepted from the tax under any of the provisions of R.C. 4503.06(F)(2)(a)-(c).

To: Thomas L. Sartini, Ashtabula County Prosecuting Attorney, Jefferson, Ohio
By: Betty D. Montgomery, Attorney General, September 5, 1997

We are in receipt of a request for an opinion submitted by your predecessor regarding the tax status of recreational vehicles. The request letter presents the following questions:

- (1) May a recreational vehicle be taxed as real property, when permanent improvements with foundations have been attached to the recreational vehicle in a campground where the owner of the recreational vehicle owns the lot on which it is located?
- (2) If such a recreational vehicle is not taxable as real property, can it be taxed as a manufactured home pursuant to R.C. 4503.06?

Based on the request letter and additional information collected by my staff, we understand the facts that give rise to these questions to be as follows. The campground described in your request is located in an unincorporated area of a township in your county. Both manufactured homes and recreational vehicles are located in the campground. The land in the campground is not under common ownership; rather, the individual lots are for sale or sold to different owners. There is conflicting information regarding whether the roadways are dedicated to any local government authority. The campground is not licensed or regulated by the local board of health as a manufactured home park, recreational vehicle park, recreation camp, or combined park-camp as those terms are defined at R.C. 3733.01. A document titled "Stipulation as to restrictive covenants and building restrictions" indicates that lot owners are prohibited from using the lots as their residences and from building permanent structures on the lots. One of these covenants purports to give the township trustees enforcement authority over the restrictions.

Additional materials have been provided which suggest that some lot owners may be in violation of these restrictions. In particular, some of the recreational vehicles have been improved with additions such as rooms with permanent foundations, decks, and roof-overs. As a result of such improvements, the recreational vehicles in the campground are "becoming more and more like manufactured homes," but are nonetheless treated differently for tax purposes. Manufactured homes both in and out of the campground are subject to the manufactured home tax, R.C. 4503.06, or in instances where the title has been surrendered, to applicable real property taxes. In contrast, recreational vehicles in the campground and their improvements are treated as

personal property, not subject to either the manufactured home tax or the real property tax. The request was submitted on behalf of the township trustees, who question whether such differing tax treatment is appropriate in the circumstances described.

Both recreational vehicles and manufactured homes are classified as motor vehicles in the Revised Code. See R.C. 4501.01(B) ("motor vehicle" means any vehicle, including manufactured homes and recreational vehicles"). Because, as discussed subsequently, this classification affects the initial tax treatment of such units, the definitions of the terms recreational vehicle and manufactured home set out in R.C. 4501.01 are applicable to the analysis of your questions. Pursuant to R.C. 4501.01(Q), a recreational vehicle is

a vehicular portable structure that is designed and constructed to be used as a temporary dwelling for travel, recreational, and vacation uses and is classed as follows:

(1) "Travel trailer" means a nonself-propelled recreational vehicle that does not exceed an overall length of thirty-five feet, exclusive of bumper and tongue or coupling, and includes a tent-type fold-out camping trailer as defined in section 4517.01 of the Revised Code.

(2) "Motor home" means a self-propelled recreational vehicle that is constructed with permanently installed facilities for cold storage, cooking and consuming of food, and for sleeping.

(3) "Truck camper" means a nonself-propelled recreational vehicle that does not have wheels for road use and is designed to be placed upon and attached to a motor vehicle. "Truck camper" does not include truck covers that consist of walls and a roof, but do not have floors and facilities enabling them to be used as a dwelling.

(4) "Fifth wheel trailer" means a vehicle that is of such size and weight as to be movable without a special highway permit, that has a gross trailer area of four hundred square feet or less, that is constructed with a raised forward section that allows a bi-level floor plan, and that is designed to be towed by a vehicle equipped with a fifth-wheel hitch ordinarily installed in the bed of a truck.

(5) "Park trailer" means a vehicle that is commonly known as a park model recreational vehicle, meets the American national standard institute standard A119.5 (1988) for park trailers, is built on a single chassis, has a gross trailer area of four hundred square feet or less when set up, is designed for seasonal or temporary living quarters, and may be connected to utilities necessary for the operation of installed features and appliances.

The term manufactured home is defined at R.C. 4501.01(O), which states:

"Manufactured home" means any nonself-propelled vehicle transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or forty body feet or more in length or, when erected on site, is three hundred twenty or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein. Calculations used to determine the number of square feet...include all expandable rooms, cabinets, and other projections containing interior space, but do not include bay windows.

With these definitions in mind, we turn to the question of whether an improved recreational vehicle in the described campground can be taxed as real property. In order to be taxed as real property, an item of property must satisfy the definition of real property set out at R.C. 5701.02, which states in pertinent part:

As used in Title LVII [taxation] of the Revised Code:

(A) "Real property," "realty," and "land" include land itself...and, unless otherwise specified in section 5701.03 of the Revised Code, all buildings, structures, improvements, and fixtures of whatever kind on the land....

....

(C) "Fixture" means an item of tangible personal property that has become permanently attached or affixed to the land or to a building, structure, or improvement, and that primarily benefits the realty and not the business, if any, conducted by the occupant on the premises.

As motor vehicles under R.C. 4501.01(B), recreational vehicles and manufactured homes in their original condition are items of tangible personal property and are taxed accordingly. 1969 Op. Att'y Gen. No. 69-128 at 2-271 to 2-272; *see also* R.C. 4505.06(B), (D), (F) (motor vehicles are subject to personal property sales and use taxes); *Trailer Mart, Inc. v. Bowers*, 162 Ohio St. 354, 130 N.E.2d 793 (1955) (dealer-held house trailers, now manufactured homes,¹ were subject to the personal property business tax). Pursuant to R.C. 5701.02(A) and (C), an item of tangible personal property loses its legal status as personal property and becomes real property when it is so affixed to real property that it qualifies as a fixture. This principle is also recognized in a longstanding body of case law. *See Masheter v. Boehm*, 37 Ohio St. 2d 68, 72, 307 N.E.2d 533, 537 (1974); *Zangerle v. Republic Steel Corp.*, 144 Ohio St. 529, 60 N.E.2d 170 (1945) (syllabus, paragraph three); *Zangerle v. Standard Oil Co.*, 144 Ohio St. 506, 60 N.E.2d 52 (1945); *Holland Furnace Co. v. Trumbull Sav. & Loan Co.* 135 Ohio St. 48, 19 N.E.2d 273 (1939) (syllabus, paragraph one); *Teaff v. Hewitt*, 1 Ohio St. 511 (1853) (syllabus, paragraph one).

In accord with established fixture law, numerous Attorney General opinions have concluded that a manufactured home loses its status both as a motor vehicle and as personal property, when it is altered in such a way that it qualifies as a fixture. 1993 Op. Att'y Gen. No. 93-078; *accord* 1996 Op. Att'y Gen. No. 96-036 at 2-140; 1969 Op. Att'y Gen. No. 69-128; 1964 Op. Att'y Gen. No. 1445, p. 2-376, at 2-378. Since a recreational vehicle in its original condition is also a motor vehicle and personal property, the same fixture analysis applies to recreational vehicles. In addition, there is no reason to distinguish the recreational vehicles in the campground you have described from recreational vehicles located elsewhere. R.C. 5701.02(A) provides that all fixtures are real property, "unless otherwise specified in section 5701.03 of the Revised Code." There is no exception in R.C. 5701.03 based on lot ownership or applicable use

¹ The term "manufactured home" replaced "house trailer" in the Revised Code in 1984. *See* 1983-1984 Ohio Laws, Part I, 790, 802 (Am. Sub. S.B. 231, eff. Sept. 20, 1984). Although the definition has evolved over time, the term "manufactured home," as currently defined, "is inclusive of the formerly used term 'house trailer.'" *LuMac Dev. Corp. v. Buck Point Ltd. Partnership*, 61 Ohio App. 3d 558, 566, 573 N.E.2d 681, 686 (Ottawa County 1988); *see also* 1949-1950 Ohio Laws 513, 514 (Am. Sub. H.B. 460, eff. March 1, 1951) (enacting the first statutory definition of "house trailer," at G.C. 6290, para. 7a).

restrictions.² See also 1977 Op. Att'y Gen. No. 77-099 (syllabus, paragraph two) (lot ownership not relevant to determination of whether house trailer is a fixture); 1964 Op. Att'y Gen. No. 1445, p. 2-376, at 2-378 (same). Accordingly, a recreational vehicle, as defined at R.C. 4501.01(Q), that is altered in such a way that it qualifies as a fixture under R.C. 5701.02(C) loses its status as personal property and is classified as real property pursuant to R.C. 5701.02(A), regardless of where that recreational vehicle is located.

The determination of whether alterations to a specific recreational vehicle are sufficient to create a fixture is a question of fact, which in the first instance must be determined by the county auditor, who is responsible for making property tax assessments. See 1993 Op. Att'y Gen. No. 93-078 at 2-387; see also 1952 Op. Att'y Gen. No. 1470, p. 391 (syllabus, paragraph three). This determination is governed by the following general principles. The essential elements of a fixture are (1) attachment to real property, (2) primary benefit to the use of the realty rather than a business thereon, and (3) permanence. R.C. 5701.02(C); *Teaff v. Hewitt* (syllabus, paragraph two); accord *Wireman v. Keneco Distrib., Inc.*, 75 Ohio St. 3d 103, 106, 661 N.E.2d 744, 747 (1996); *Masheter v. Boehm*, 37 Ohio St. 2d at 72, 307 N.E.2d at 537; *Zangerle v. Republic Steel Corp.* (syllabus, paragraph four); *Zangerle v. Standard Oil Co.* (syllabus, paragraph two); *Holland Furnace Co. v. Trumbull Sav. & Loan Co.* (syllabus, paragraph two).³ In the situation you have described, it is clear that the recreational vehicles primarily benefit the realty and not any business thereon. It is also clear that they are in fact attached to the realty by virtue of the various improvements. Thus, in order to determine whether any of the recreational vehicles have become fixtures, it will be necessary for the county auditor to determine in each instance whether the attachment to the realty is permanent. We will, therefore, focus our discussion on that element of the fixture test.

Permanence, for purposes of fixture law, is not simply a matter of measuring the physical strength and durability of an attachment to real property; instead, permanence refers to the "intention of the party making the annexation, to make the article a permanent accession to the freehold." *Teaff v. Hewitt*, 1 Ohio St. at 530; accord *Wireman v. Keneco Distrib., Inc.*, 75 Ohio St. 3d at 106, 661 N.E.2d at 747. The strength and durability of attachment is evidence of intent, but it must be considered in context with other available evidence. A minimal physical attachment may be sufficient to create a fixture in situations where there is additional objective evidence of the owner's intent that the attachment be permanent. Conversely, even a very high degree of

² The only pertinent exception specified in R.C. 5701.03 is for business fixtures, which are expressly defined as personal rather than real property.

³ For a brief period, the Ohio Supreme Court rejected the second element of the traditional fixture analysis in tax classification cases. See *Thomas Steel Strip Corp. v. Limbach*, 61 Ohio St. 3d 340, 575 N.E.2d 114 (1991); *Rotek, Inc. v. Limbach*, 50 Ohio St. 3d 81, 552 N.E.2d 640 (1990); *Green Circle Growers, Inc. v. Lorain County Bd. of Revision*, 35 Ohio St. 3d 38, 577 N.E.2d 899 (1988). This judicial standard was legislatively overruled by enactment of R.C. 5701.02(C), which codified the traditional three element fixture test previously applied in tax cases pursuant to the holdings in *Zangerle v. Republic Steel Corp.*, 144 Ohio St. 529, 60 N.E.2d 170 (1945), and *Zangerle v. Standard Oil Co.*, 144 Ohio St. 506, 60 N.E.2d 52 (1945). See 1991-1992 Ohio Laws, Part I, 1528 (Sub. S.B. 272, eff. July 20, 1992); Legislative Service Commission, *Summary of Enactments 119th General Assembly 1992*, Part II, 971 (1993) (analysis of Sub. S.B. 272).

attachment may not create a fixture, when the balance of other evidence demonstrates an intent to maintain the attached property as personalty. *Masheter v. Boehm*, 37 Ohio St. 2d at 73, 307 N.E.2d at 538. The general rule is that "the mode or extent of annexation does not of itself create a fixture." *Zangerle v. Republic Steel Corp.* (syllabus, paragraph six).

This general rule has been applied consistently in opinions of the Attorneys General dealing with manufactured homes, and as stated previously, the same analysis is applicable to recreational vehicles. The opinions have concluded that in order to determine whether a manufactured home installed on a "permanent" foundation has become a fixture, it is necessary to consider not only the physical characteristics of the foundation, but also whether the attending facts and circumstances indicate that the owner intends the manufactured home to remain on that foundation permanently. See 1964 Op. Att'y Gen. No. 1445, p. 2-376 (syllabus, paragraph two); accord 1969 Op. Att'y Gen. No. 69-128 at 2-273.

Although the opinions have not elaborated on what these additional facts and circumstances should be, the case law pertaining to fixtures generally requires consideration of the following objective factors: the nature of the attached property; the relationship and situation of the parties; whether the attachment was made with a view toward permanence or for a special purpose or business; any economic advantage to the owner of treating the attached property as real or personal; the utility or indispensability of the attached property to the use of the realty as a whole; the degree of difficulty and extent of economic loss involved in removing the attached property from the realty; and the damage to the severed property which removal would cause. See generally *Masheter v. Boehm*, 37 Ohio St. 2d at 77, 307 N.E.2d at 540; *Zangerle v. Republic Steel Corp.* (syllabus, paragraph four); *Zangerle v. Standard Oil Co.* (syllabus, paragraph five); *Holland Furnace Co. v. Trumbull Sav. & Loan Co.*, 135 Ohio St. at 53-54, 19 N.E.2d at 275; *Teaff v. Hewitt*, 1 Ohio St. at 533-42. Additionally, and of particular note in your situation, any tax advantage that accrues by maintaining the attached property as either personal or real property may be considered as evidence of intent. *Zangerle v. Standard Oil Co.*, 144 Ohio St. at 520, 60 N.E.2d at 58.

While most situations will require a balancing of all the above factors, including the mode of attachment, there is an exception. The mode of attachment alone can be conclusive evidence of the necessary intent in situations where personal property is attached to real property in such a way that it cannot be removed without causing serious injury either to itself or to the real property. *Teaff v. Hewitt*, 1 Ohio St. at 534; accord *Zangerle v. Standard Oil Co.* (syllabus, paragraph three); *Foxtman v. Goepfer*, 14 Ohio St. 558, 564-65 (1863); *Rose v. Marlowe's Cafe, Inc.*, 68 Ohio Misc. 2d 9, 12, 646 N.E.2d 271, 272 (C.P. Hamilton County 1994). Several opinions of the Attorneys General have applied this principle when considering the analogous question of whether a manufactured home becomes a fixture when its wheels, axles, chassis, or other indicia of mobility are removed incident to installing it on a foundation. These opinions have concluded that if the alterations to the manufactured home are so extensive that the home must be reconstructed to make it usable as a motor vehicle when it is removed from the site, the manufactured home has become part of the realty. See 1952 Op. Att'y Gen. No. 1470, p. 391 (syllabus, paragraph two); accord 1977 Op. Att'y Gen. No. 77-099 at 2-329 to 2-330; 1969 Op. Att'y Gen. No. 69-128 at 2-272; 1964 Op. Att'y Gen. No. 1445, p. 2-376, at 2-378. See generally *Zangerle v. Standard Oil Co.* (syllabus, paragraph three). If, however, simple reassembly or disassembly is all that is necessary to make the manufactured home operable as a

motor vehicle, the alterations alone are not sufficient to convert the manufactured home to realty, *id.*, and it is necessary to review additional evidence to determine whether the owner intends the manufactured home to remain attached to the property permanently. See 1969 Op. Att'y Gen. No. 69-128; 1964 Op. Att'y Gen. No. 1445, p. 2-376. The distinction between mere reassembly and reconstruction is a question of fact for the county auditor. 1952 Op. Att'y Gen. No. 1470, p. 391 (syllabus, paragraph three); *accord* 1969 Op. Att'y Gen. No. 69-128 at 2-272; 1964 Op. Att'y Gen. No. 1445, p. 2-376, at 2-378.

We are aware that the above described analysis is more demanding than the analysis of permanence that has developed with respect to "mobile homes" in the context of zoning and land use law. The test commonly articulated for permanence in zoning and land use cases is the removal of indicia of mobility (wheels, axles, hitches, etc.) and placement on a permanent foundation. Some of the opinions in these cases do look closely for objective evidence of intent in addition to the specific nature of the attachment. See *Benner v. Hammond*, 109 Ohio App. 3d 822, 673 N.E.2d 205 (Ross County 1996) (attachment to garage and deck, voluntary surrender of motor vehicle title for tax purposes), *appeal denied*, 77 Ohio St. 3d 1479, 673 N.E.2d 141 (1996); *Minear v. Randolph Township Bd. of Zoning Appeals*, No. 90-P-2146, 1991 Ohio App. LEXIS 2009 (Portage County May 3, 1991) (mobile unit attached to and partially surrounded by additions and structures that were themselves part of the realty); *Snell v. Hawn*, No. 86-CA-11 (Ct. App. Miami County Oct. 27, 1986) (LEXIS, Ohio library, Ohcase file) (mobile unit shared wall with Florida room, siding and roof enclosed mobile unit with additions, utilities so integrated that removal would seriously damage mobile unit, voluntary surrender of motor vehicle title for tax purposes). Many of the opinions, however, mention only the physical aspects of the foundation itself, with no discussion of any other evidence relating to intent. See, e.g., *Enberg v. Canton Township Bd. of Zoning Appeals*, 78 Ohio App. 3d 828, 605 N.E.2d 1365 (Stark County 1992); *Village of Moscow v. Skeene*, 65 Ohio App. 3d 785, 585 N.E.2d 493 (Clermont County 1989); *Sylvester v. Howland Township Bd. of Zoning Appeals*, 34 Ohio App. 3d 270, 518 N.E.2d 36 (Trumbull County 1986); *Groff v. Heath*, Acc. Case No. 96-A-0033, 1996 Ohio App. LEXIS 5529 (Ashtabula County Dec. 6, 1996); *Stebelton v. Boblenz*, No. 16-CA-93, 1993 Ohio App. LEXIS 6088 (Fairfield County Dec. 6, 1993); *Warner v. Jerusalem Township Bd. of Zoning Appeals*, No. L-88-353, 1989 Ohio App. LEXIS 836 (Lucas County Mar. 17, 1989); *Garland v. Emerine*, No. 2516 (Ct. App. Trumbull County May 22, 1978). These latter cases may appear to set a lesser standard for permanence than we have discussed thus far. They are distinguishable on several grounds, however.

First, although the zoning and land use cases address the question of permanence, they are not fixture cases and are not required to use the definition of permanence developed in fixture law. The general fact pattern of the zoning and land use cases is that a zoning ordinance or restrictive covenant prohibits the use of temporary or mobile units at the location in question. The owner defends against these prohibitions by asserting that the unit has become permanent and the prohibitions no longer apply. Thus, the issue in these cases is whether the unit as installed has become "permanent" or ceased to be "temporary" as those terms are used by the particular zoning ordinance or covenant. The issue is not whether the unit has been altered sufficiently to become a fixture for purposes of real property law, as is required for a change in tax status.

In addition, the facts and applicable law in the zoning and land use cases generally create a presumption in favor of permanence. The facts in these cases are such that the declared intent of the owner to make the installation permanent is supported, in part, by the existence of zoning or restrictive covenants that prohibit nonpermanent units, and in some instances, further supported

by the owner's voluntary surrender of the motor vehicle title. Restrictions on land use are interpreted narrowly against the restrictions and in favor of expanded use of the property. *See generally Saunders v. Clark County Zoning Dept.*, 66 Ohio St. 2d 259, 261, 421 N.E.2d 152, 154 (1981) (zoning restrictions); *Loblaw, Inc. v. Warren Plaza, Inc.*, 163 Ohio St. 581, 127 N.E.2d 754 (1955) (syllabus, paragraph two) (deed restrictions). Thus, the burden on those seeking to enforce restrictions against temporary use is to prove that the physical attachment is so inconsistent with permanence that it rebuts the presumption created in favor of permanence. *See Benner v. Hammond*, 109 Ohio App. 3d at 829, 673 N.E.2d at 209 ("almost any home is movable, and therefore it is unreasonable to harp on the possibility that a manufactured home may be moved when the owner certifies that it will not be moved. This interpretation is buttressed by the procedure whereby a manufactured home owner may submit his manufactured home title to the county auditor, and the manufactured home is thereafter considered part of the real property and is taxed as such"); *State v. Fillmore*, No. 369 (Ct. App. Highland County July 13, 1979) (owner's claim that mobile unit was permanent because wheels were removed was contradicted by fact that it was attached to realty in a manner designed for and contributing to its removal potential).

In contrast, the facts and applicable law in tax cases involving fixtures tend to create a presumption in favor of mobility. The owner's declared intent in a contested tax case usually is to maintain the unit's mobility so that it qualifies as personal property. This declared intent is supported by the more favorable tax treatment accorded personal property, and, in your particular case, also by the fact that the restrictive covenants prohibit rather than require permanent units. Additionally, doubts in tax cases are to be resolved against application of the tax. *See, e.g., State ex rel. Fisher v. Waterfront Elec. Ry.*, 63 Ohio Misc. 2d 507, 513-14, 635 N.E.2d 81, 85-86 (C.P. Lucas County 1993). *See generally Gulf Oil Corp. v. Kosydar*, 44 Ohio St. 2d 208, 339 N.E.2d 820 (1975) (syllabus, paragraph one). In such a situation, the burden on a county auditor seeking to impose a real property tax is to rebut a presumption of mobility by proving that the physical mode of attachment is inconsistent with any mobility. Thus, in a tax case, physical evidence of the mode of attachment standing alone will not be sufficient proof of permanence, unless it establishes that a manufactured home is attached to the real property in such a way that it cannot be removed without serious injury to itself or to the real property. *See, e.g., 1969 Op. Att'y Gen. No. 69-128 at 2-272. See generally Teaff v. Hewitt*, 1 Ohio St. at 534; *accord Zangerle v. Standard Oil Co.* (syllabus, paragraph three); *Fortman v. Goepper*, 14 Ohio St. at 564-65.

The above cases deal with manufactured homes rather than recreational vehicles. As previously discussed, however, recreational vehicles are subject to the same fixture analysis as manufactured homes. It may be less common that recreational vehicles become fixtures, but the criteria for making the determination are the same as for manufactured homes. In applying these criteria to the situation you have described, it is also important to consider the property status of the various additions to the recreational vehicles -- the rooms, decks, or other site-built additions that have their own foundations. If the attachment of these additions to the land is more significant than their attachment to the recreational vehicles, they may be buildings or structures in their own right and thus may be taxable as real property. *See R.C. 5701.02(B)* (defining

building); R.C. 5701.02(E) (defining structure);⁴ see also *Beatley v. Logan County Bd. of Revision*, Nos. 91-K-1019, 91-K-1020, 91-K-1021, 1993 Ohio Tax LEXIS 1984, at *8-10 (Bd. of Tax Appeals Nov. 19, 1993) (canopies and awnings held primarily attached to mobile home, while decks, enclosed porches or cabanas, and other attachments held more significantly attached to land and taxable as real property). When the additions themselves constitute real property, an attached recreational vehicle will become real property if its removal would seriously damage such additions.

Accordingly, when all the above principles relating to fixtures are taken into account, a recreational vehicle becomes a fixture taxable as real property when it is attached to the real property in such a manner that, (1) when it is removed, it must be reconstructed in order to function as a motor vehicle, or (2) its removal will cause serious injury to the real property, inclusive of any buildings and structures thereon. In situations where the recreational vehicle does not meet one of these two criteria, it will be necessary to consider the physical mode of attachment in conjunction with other objective evidence in order to determine whether the owner intends the recreational vehicle to remain attached to the real property permanently. The determination of whether a recreational vehicle has become a fixture is a question of fact to be determined in the first instance by the county auditor.

We turn now to your second question, which concerns the tax status of recreational vehicles that do not qualify as fixtures under R.C. 5701.02(C) and, thus, cannot be taxed as real property. You ask whether these recreational vehicles, when improved as described, can be taxed as manufactured homes under R.C. 4503.06. In contrast to the fixture analysis, which applies equally to manufactured homes and recreational vehicles, the analysis of this question is affected by the distinction between recreational vehicles and manufactured homes set out at R.C. 4501.01(Q) and (O) respectively, and also by the characteristics of the location.

As previously discussed, recreational vehicles that have not become fixtures are motor vehicles, R.C. 4501.01(B), subject to personal property taxes and such other taxes as are specifically imposed by the motor vehicle statutes. R.C. 4503.06 is one such motor vehicle statute. R.C. 4503.06(A) provides that "[a]ll *manufactured homes*...are subject to an annual tax, payable by the owner, for the privilege of using or occupying a *manufactured home* in this state." (Emphasis added.) The term *manufactured home* is repeated throughout R.C. 4503.06; the only reference to recreational vehicles appears in subdivision (F) of the statute, which deals with a

⁴ Pursuant to R.C. 5701.02,

(B) "Building" means a permanent fabrication or construction, attached or affixed to land, consisting of foundations, walls, columns, girders, beams, floors, and a roof, or some combination of these elemental parts, that is intended as a habitation or shelter for people or animals or a shelter for tangible personal property, and that has structural integrity independent of the tangible personal property, if any, it is designed to shelter.

....

(E) "Structure" means a permanent fabrication or construction, other than a building, that is attached or affixed to land, and that increases or enhances utilization or enjoyment of the land.

specific type of recreational vehicle known as a "travel trailer." R.C. 4503.06(F) provides that

A manufactured home is not subject to this section when:

....

(2) It is a travel trailer, as defined in section 4501.01 of the Revised Code and is currently licensed under Chapter 4503 of the Revised Code or unused or unoccupied and stored at the owner's normal place of residence or at a recognized storage facility. *Travel trailers that have a situs longer than thirty days in one location and are connected to existing utilities shall not be considered as travel trailers for purposes of this division, except* when any of the following applies:

(a) The situs is in a state facility or a camping or park area as defined in division (B), (C), (G), or (H) of section 3733.01 of the Revised Code;

(b) The situs is in a camping or park area that is a tract of land that has been limited to recreational use by deed or zoning restrictions and subdivided for sale of five or more individual lots for the express or implied purpose of occupancy by either self-contained recreational vehicles as defined in division (E) of section 3733.01 of the Revised Code or by dependent recreational vehicles as defined in division (F) of section 3733.01 of the Revised Code;

(c) The travel trailer is stored and not used or occupied at the owner's normal place of residence or at a recognized storage facility.

(Emphasis added.)

A travel trailer, as defined at R.C. 4501.01(Q)(1), is a specific kind of recreational vehicle that is nonself-propelled and is not more than thirty-five feet long, exclusive of the bumper and tongue or coupling. Pursuant to the provisions of R.C. 4503.06(F), a recreational vehicle that qualifies as a travel trailer will be subject to the manufactured home tax if it has a situs at one location longer than thirty days, is connected to existing utilities, and is not excepted from the tax by one of the provisions of R.C. 4503.06(F)(2)(a)-(c). There are no provisions of R.C. 4503.06 that apply the manufactured home tax to recreational vehicles generally or to the other four types of recreational vehicles defined at R.C. 4501.01(Q), *i.e.*, motor homes, truck campers, fifth wheel trailers, or park trailers. The manufactured home tax of R.C. 4503.06 applies expressly only to manufactured homes and, under the specified circumstances, to travel trailers. *See* 1993 Op. Att'y Gen. No. 93-078 at 2-386 n.1. It is a longstanding rule of statutory construction that "where a statute specifically and expressly mentions certain things, other things belonging to the same class...are excluded." *See Wierick v. Mansfield Lumber Co.*, 96 Ohio St. 386, 397, 117 N.E. 362, 365 (1917). Accordingly, the manufactured home tax cannot be extended to recreational vehicles generally or to any class of recreational vehicle other than travel trailers.

If there are any travel trailers among the recreational vehicles located in the campground described in your request, they are subject to the manufactured home tax only under the specific conditions provided in R.C. 4503.06(F). These conditions are that (1) the travel trailer must have a situs in one location for longer than thirty days and be connected to existing utilities, and (2) it may not be subject to any of the exceptions listed in R.C. 4503.06(F)(2)(a)-(c). Clearly the first condition is met, thus travel trailers in the campground will be subject to the manufactured home tax unless an exception applies. The exception at (F)(2)(a) does not appear to apply because the campground is not a state facility nor is it licensed or regulated by the local board of health as one

of the camping or park areas defined at R.C. 3733.01.⁵ The storage exception at (F)(2)(c) does not apply. It appears from your description and the materials provided, however, that the (F)(2)(b) exception is applicable.

The campground you have described is a tract of land limited to recreational uses by what appear to be deed restrictions. The tract has been subdivided for sale of more than five individual lots. The language of the restrictions demonstrates an understanding that the lots will be occupied by self-contained or dependent recreational vehicles.⁶ Thus, the elements of the (F)(2)(b) exception are met, and travel trailers in the campground are not subject to the manufactured home tax.

The allegation that some owners are in violation of the deed restrictions by residing in the campground year round has no bearing on application of the (F)(2)(b) exception. The exception as described in R.C. 4503.06(F)(2)(b), however, depends only on the existence of deed or zoning restrictions and not, as was true under earlier statutory language, on whether a travel trailer is actually "used as a temporary dwelling for travel, recreational, and vacation uses." See 1963 Ohio Laws 1042 (Am. Sub. H.B. 228, eff. Sept. 30, 1963) (emphasis added). Nothing in the current statutory language imposes the manufactured home tax on travel trailers that fail to comply with applicable zoning or deed restrictions.

By adopting a tax exception dependent on the restrictions rather than actual use, the General Assembly appears to have assumed that those with standing to enforce the restrictions will do so out of their own self-interest. In your situation, however, private parties with standing to enforce the restrictive covenants have not done so and there is no applicable zoning which the township trustees can enforce. A board of township trustees has no statutory authority to enforce restrictive covenants. Such covenants are imposed by deed and are by their nature private zoning agreements, enforceable only by those with standing as proper parties to the covenants. See, e.g., *Berger v. Van Sweringen Co.*, 6 Ohio St 2d 100, 216 N.E.2d 54 (1966); *LuMac Dev. Corp. v. Buck Point Ltd. Partnership*, 61 Ohio App. 3d 558, 562-63, 573 N.E.2d 681, 683-84 (Ottawa County 1988); *Central Motors Corp. v. City of Pepper Pike*, 63 Ohio App. 2d 34, 65-66, 409 N.E.2d 258, 280-81 (Cuyahoga County 1979); *West Hill Baptist Church v. Abbate*, 24 Ohio Misc. 66, 72, 261 N.E.2d 196, 200 (C.P. Summit County 1969). Both the general authority and zoning authority of a board of township trustees is limited to that conferred by statute. See *Yorkavitz v. Board of Township Trustees*, 166 Ohio St. 349, 351, 142 N.E.2d 655, 656 (1957) (zoning);

⁵ You have not asked whether the area should be so licensed and regulated, nor have you provided sufficient facts to address this question. An area where lots are sold and the roadways are dedicated to the local government cannot be a manufactured home park, see 1991 Op. Att'y Gen. No. 91-020, but this limitation does not apply to the other camp or park areas defined at R.C. 3733.01. A determination that the area should be regulated under R.C. 3733.01 would serve to exempt any travel trailers located therein from the manufactured home tax. As the subsequent discussion will show, however, another one of the exceptions of R.C. 4503.06(F)(2) is applicable in this case. Therefore, it is not necessary for purposes of this opinion to determine question of whether the (F)(2)(a) exception should also apply.

⁶ Self-contained recreational vehicles operate independent of sewer and water connections and have an internal sewage holding tank. All other recreational vehicles are defined as dependent. See R.C. 3733.01(E), (F).

Trustees of New London Township v. Miner, 26 Ohio St. 452, 456 (1875) (general authority). The parties to a private restrictive covenant cannot confer enforcement authority upon a board of township trustees that is not otherwise a party to that covenant. Nor can a board of township trustees simply assume enforcement authority for such a private covenant. Such an assumption of power would subvert the statutory zoning process mandated by R.C. Chapter 519. As a result, it may occur in situations such as this that even though deed restrictions against certain uses of a travel trailer are not being enforced, the travel trailer is excepted from the manufactured home tax by the existence of those same restrictions. Accordingly, a recreational vehicle that is not taxable as real property is subject to the manufactured home tax imposed by R.C. 4503.06 only when the recreational vehicle is a travel trailer, as defined at R.C. 4501.01(Q)(1), that has a situs in one place for more than thirty days, is connected to existing utilities, and is not excepted from the tax under any of the provisions of R.C. 4503.06(F)(2)(a)-(c).

It is therefore my opinion and you are hereby advised that:

1. A recreational vehicle, as defined at R.C. 4501.01(Q), that is altered in such a way that it qualifies as a fixture under R.C. 5701.02(C) loses its status as personal property and is classified as real property pursuant to R.C. 5701.02(A), regardless of where that recreational vehicle is located.
2. A recreational vehicle becomes a fixture taxable as real property when it is attached to the real property in such a manner that, (1) when it is removed, it must be reconstructed in order to function as a motor vehicle, or (2) its removal will cause serious injury to the real property, inclusive of any buildings and structures thereon. In situations where the recreational vehicle does not meet one of these two criteria, it will be necessary to consider the physical mode of attachment in conjunction with other objective evidence in order to determine whether the owner intends the recreational vehicle to remain attached to the real property permanently.
3. The determination of whether a recreational vehicle has become a fixture is a question of fact to be determined in the first instance by the county auditor.
4. A recreational vehicle that is not taxable as real property is subject to the manufactured home tax of R.C. 4503.06 only when the recreational vehicle is a travel trailer, as defined at R.C. 4501.01(Q)(1), that has a situs in one place for more than thirty days, is connected to existing utilities, and is not excepted from the tax under any of the provisions of R.C. 4503.06(F)(2)(a)-(c).